# TEXAS REGISTER

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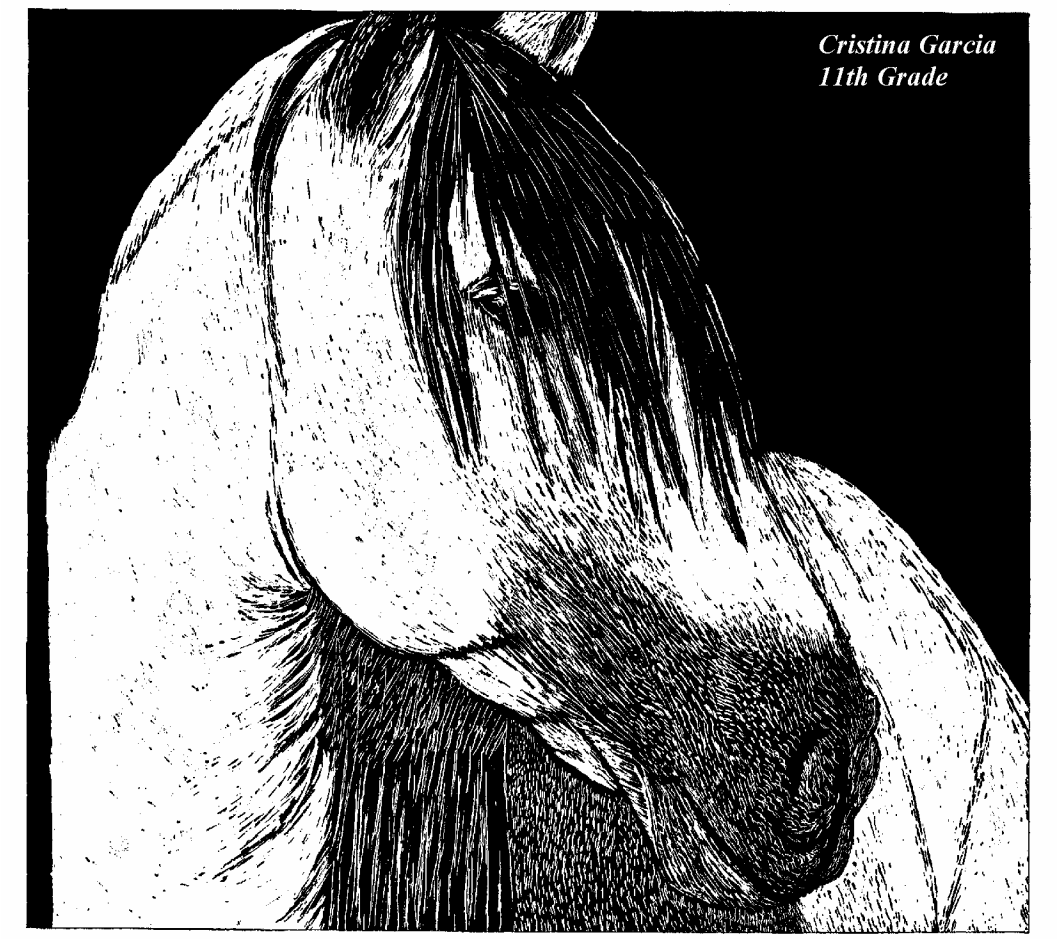

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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### Texas Commission on Environmental Quality



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### Texas Department of Insurance



### Texas Lottery Commission



### Public Utility Commission of Texas



### Texas A&M University, Board of Regents

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Proclamation 41-3046

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas House of Representatives in District No. 48 which consists of part of Travis County; and

WHEREAS, the final canvass of the results of an emergency special election held on January 17, 2006, to fill such vacancy was completed on January 24, 2006; and

WHEREAS, no candidate in the special election received a majority of the votes cast as required by Section 203.003 of the Texas Election Code; and

WHEREAS, Section 2.025 of the Texas Election Code requires a special runoff election to be held not earlier than the twentieth day or later than the forty-fifth day after the date of the final canvass;

NOW, THEREFORE, I, DAVID DEWHURST, ACTING GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held for State Representative on Tuesday, the 14th day of February, 2006, for the purpose of electing a State Representative for District No. 48.

Early voting by personal appearance shall begin on February 6, 2006, pursuant to Section 85.001(b) of the Texas Election Code.

A copy of this order will be mailed immediately to the County Judge in Travis County and all appropriate writs will be issued and all proper proceedings will be followed to the end that said election may be held to fill the vacancy in District No. 48 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 24th day of January, 2006.

David Dewhurst, Acting Governor of Texas

Attested by: Roger William, Secretary of State

TRD-200600510

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 1. GENERAL LAND OFFICE

### CHAPTER 15. COASTAL AREA PLANNING

### SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

**31 TAC §15.13**

The General Land Office is renewing the effectiveness of the emergency adoption of new §15.13, for a 60-day period. The text of the new section was originally published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6516).

Filed with the Office of the Secretary of State on January 23, 2006.

TRD-200600368
Trace Finley
Policy Director
General Land Office
Original Effective Date: September 26, 2005
Expiration Date: March 24, 2006
For further information, please call: (512) 305-9126

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text**. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 10. COMMUNITY DEVELOPMENT

## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 50. 2006 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

**10 TAC §50.9**

The Texas Department of Housing and Community Affairs proposes an amendment to §50.9(i)(6), regarding the Level of Community Support from State Elected Officials as part of the 2006 Housing Tax Credit Program Qualified Allocation Plan and Rules.

The amendment is necessary to provide a correction of a date that will ensure state elected officials a full ability to participate in the scoring process of Housing Tax Credit applications.

Edwina Carrington, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Carrington also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amended section will be the enhancement of the state's ability to provide safe and sanitary housing for Texans through the efficient and coordinated allocation of federal income tax credit authority available to the state for administration of state housing agencies. There will be no effect on small businesses or persons. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments may be submitted to Brooke Boston, Director of Multifamily Finance Production, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail at brooke.boston@tdhca.state.tx.us, or at (512) 475-3340. Comments must be made within 30 days of this notice.

The amendment is proposed under the Texas Government Code, Chapter 2306; and the Internal Revenue Code of 1986, §42, as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs

No other code, article or statute is affected by the proposed amendment.

*§50.9. Application: Submission; Communication with Department Employees; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2007 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.*

(a) - (h) (No change.)

(i) Selection Criteria. All Applications will be scored and ranked using the point system identified in this subsection. When applicable, use normal rounding. All Applications, with the exception of TX-USDA-RHS Applications, must score a minimum of 125 points to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 209.

(1) - (5) (No change.)

(6) The Level of Community Support from State Elected Officials. The level of community support for the application, evaluated on the basis of written statements from state elected officials. (2306.6710(b)(1)(F) and (f) and (g); 2306.6725(a)(2)) Applications may qualify to receive up to 14 points for this item. Points will be awarded based on the written statements of support or opposition from state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official by April 1, 2006 [~~April 1, 2005~~]. Officials to be considered are those officials in office at the time the Application is submitted. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are 7 points each for a maximum of 14 points; opposition letters are -7 points each for a maximum of -14 points.

(7) - (24) (No change.)

(j) - (k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600460
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 475-4595

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# PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

## CHAPTER 188. FUEL ETHANOL AND BIODIESEL PRODUCTION INCENTIVE PROGRAM

**10 TAC §§188.1 - 188.10**

The Office of the Governor, Economic Development and Tourism Office (Office) proposes new Chapter 188, §§188.1 - 188.10, Fuel Ethanol and Biodiesel Production Incentive Program (Program) relating to the registration of fuel ethanol and biodiesel producers and grants of state funds for the production of fuel ethanol and biodiesel. The Program will encourage the development and production of fuel ethanol and biodiesel and will set standards for plant registration.

The Program is authorized by Texas Agriculture Code, Chapter 16, and will be administered by the Texas Department of Agriculture (Department) as authorized by Texas Agriculture Code, §16.005. The proposed rules are needed to transfer authority to administer the Program to the Department so that the Program can be implemented. Chapter 188 sets out the Memorandum of Understanding between the Office and the Department and delineates the roles of the parties related to the Program. The Department will publish program guidelines contemporaneously with the publication of these rules.

Tracye McDaniel, Executive Director of the Office, has determined that for each year of the first five years that the rules are in effect there will be no additional cost and no reduction in cost to local governments as a result of administering or enforcing the rules. Each full year for the first five years that the rules are in effect the additional cost to state government is estimated to be $22 million, which will be provided to eligible registered fuel ethanol and biodiesel producers in the form of matching grant funds from undedicated state general revenue. There will be no cost to small businesses or micro-businesses.

Ms. McDaniel has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the rules is the economic benefit to the state that results from the implementation of the program and resulting development of new alternative fuel products and businesses. Only fuel ethanol and biodiesel producers who choose to participate in the program will incur economic costs as a result of complying with the rules. The economic costs anticipated for persons who choose to participate in the Program and to comply with the proposed rules are the matching funds required by Texas Agriculture Code, §16.005 and the costs of required audits and reports under the Program.

Written comments on the proposed rules may be hand delivered to the Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701; mailed to P.O. Box 12428, Austin, Texas 78711-2428; faxed to (512) 463-1932, or e-mailed to rabbott@governor.state.tx.us. Comments should be addressed to the attention of Robin Abbott, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed rules.

The rules are proposed pursuant to Texas Agriculture Code, §16.006 which directs the Office to adopt rules for distribution of grants under the program and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Texas Agriculture Code, Chapter 16, is affected by this proposal.

*§188.1. Authority and Parties.*

(a) Authority for Agreement. This Memorandum of Understanding (Agreement) is entered into pursuant to provisions of the Texas Government Code, Chapter 771, the Interagency Cooperation Act.

(b) Parties. The Parties to this Agreement are the Economic Development and Tourism Office (Office) in the Office of the Governor and the Texas Department of Agriculture (Department), a state agency of the State of Texas. The Parties to this agreement may also be referred to collectively as the Parties or individually as a Party.

(c) Authority of Parties. The Parties have authority to enter into this Agreement pursuant to the provisions of Texas Agriculture Code, §16.005, and of Senate Bill 1, 79th Legislature, Regular Session, the General Appropriations Act (Act), Article I, Rider 4 (page I-48).

*§188.2. Scope of Work.*

(a) The Department shall perform all functions and activities authorized by Texas Agriculture Code, Chapter 16, relating to administration of the fuel ethanol and biodiesel production incentive program, including the following:

(1) The Department shall develop guidelines for administration of the program.

(2) The Department shall review all program applications for registration of a fuel ethanol or biodiesel facility and make a determination, based on the guidelines, to approve or decline the application.

(3) The Department shall forward to the Office all applications submitted to the Department along with the Commissioner of Agriculture's approval or rejection of the application, detailed information about the process used to review the application, information indicating whether the application complies with the guidelines and a summary of any other information that forms the basis for the determination to approve or decline the application.

(4) The Department shall provide to the Office notice of all grant payments made by the Department under Texas Agriculture Code, Chapter 16, including copies of the quarterly reports submitted by producers.

(5) The Department will submit monthly reports to the Office as agreed.

(6) The Department agrees to share all information reasonably necessary for the performance of either Party's duties under this agreement.

(b) The Office shall perform the following functions related to the fuel ethanol and biodiesel production incentive program created by Texas Agriculture Code, Chapter 16.

(1) The Office shall adopt rules as reasonably necessary to transfer all functions and funding of Texas Agriculture Code, Chapter 16, to the Department.

(2) The Office shall review the Commissioner of Agriculture's determination to approve or decline all eligible program applications for registration of a fuel ethanol or biodiesel facility submitted to the Office by the Department and issue its concurrent determination to approve or decline the application based on the Department's review.

(3) The Office shall share all information reasonably necessary for the performance of either Party's duties under this Agreement.

*§188.3. Period of Performance.*

This agreement takes effect upon the date of last signatory and terminates on August 31, 2007.

*§188.4. Audit.*

The Parties agree that the Texas State Auditor's Office (State Auditor) may audit or investigate any Party or any subcontractor or other entity receiving funds from the State of Texas under this Agreement. Acceptance of funds from the State of Texas directly under the Agreement or indirectly through a subcontract under this Agreement constitutes acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Each Party shall incorporate the provisions of this paragraph into all subcontractor contracts and agreements. Under the direction of the legislative audit committee, any entity that is subject to an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

*§188.5. Governing Law.*

This Agreement, including all performance requirements and disputes hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. Venue for any legal action brought under this contract shall be in Austin, Travis County, Texas.

*§188.6. Notice.*

Written notice shall be deemed to have been duly served when received by hand delivery or when sent and received by certified or registered mail or by private courier with tracking service to the following addresses:

(1) To the Office: Address: P.O. Box 12428, Austin, Texas 78711; Phone: (512) 936-0181; Fax: (512) 936-0303.

(2) To the Department: Address: P.O. Box 12847, Austin, Texas 78711; Phone: (512) 463-7476; Fax: (512) 463-6072.

*§188.7. Funding and Performance.*

(a) Funds collected and appropriated pursuant to the Act, Article I, Rider 25 (page I-57), appropriation for the Trusteed Programs Within the Office of the Governor, are hereby assigned to the Department pursuant to the authority set forth in the Act, Article I, Rider 4 (page I-48), appropriation for the Office.

(b) The Parties' authority and appropriations are subject to the actions of the Texas Legislature. If any Party becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, that Party may, by providing written notice to the other Party, immediately terminate this Agreement without penalty to any Party or to the State of Texas. In the event of termination under this paragraph, no Party shall be liable for damages or losses caused or associated with such termination.

*§188.8. Assignment.*

No Party may transfer or assign any rights or duties under or any interest in this Agreement without the prior written consent of the other Party.

*§188.9. Severability.*

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired or invalidated.

*§188.10. Certifications.*

The parties do hereby certify that:

(1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the Parties;

(2) the proposed Agreement serves the interest of efficient and economical administration of state government; and

(3) the services covered by this Agreement are not required by the Texas Constitution, Article 16, Section 21, to be supplied under contract given to the lowest bidder.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600464
Tracye McDaniel
Executive Director
Office of the Governor, Economic Development and Tourism Division
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 936-0181

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# TITLE 16. ECONOMIC REGULATION

## PART 1. RAILROAD COMMISSION OF TEXAS

### CHAPTER 7. GAS SERVICES DIVISION

### SUBCHAPTER I. NATURAL GAS PIPELINE COMPETITION

**16 TAC §7.7201**

The Railroad Commission of Texas proposes new §7.7201, relating to the Natural Gas Pipeline Competition Study Advisory Committee, which is proposed to be in new Subchapter I entitled "Natural Gas Pipeline Competition." Pursuant to the requirements of Texas Government Code, §§2110.001 - 2110.008, the new section creates the Natural Gas Pipeline Competition Study Advisory Committee of the Commission and establishes its duration; sets forth the purpose and tasks of the committee; prescribes the nomination and appointment process; and sets forth the mechanisms by which the committee reports to the Commission.

Proposed new §7.7201 creates the Natural Gas Pipeline Competition Study Advisory Committee, effective April 1, 2006, and abolishes it on December 31, 2006, unless the Commission amends the rule to change that date. The purpose of the committee is to give the Commission the benefit of the members' collective business, technical, and operating expertise and experience to help the Commission review competition in the Texas intrastate natural gas pipeline industry, assess the

effect of current statutes and rules on competition, and develop recommendations for changes to statutes or rules that may be necessary. The Commission will not reimburse members for travel or other expenses related to service on the committee.

The Advisory Committee will exist until December 31, 2006, unless the Commission amends the rule to change the date of its abolition. Steve Pitner, Director, Gas Services Division, has determined that for each year of the first five years the new section is in effect, there will be negligible fiscal implications for state government as a result of enforcing or administering the section. The amount of staff time spent in support of the Natural Gas Pipeline Competition Study Advisory Committee, as provided in the proposed rule, will be minimal and will be provided within the existing Gas Services Division staffing and budget.

There will be no fiscal implications for local governments. There is an anticipated economic cost to small businesses, micro-businesses, and to individuals, but only to those small business and micro-business owners or individuals who are members of the Natural Gas Pipeline Competition Study Advisory Committee. Due to the nature of the rule's provisions, however, the amount of that cost cannot be determined. The anticipated economic cost arises from the provision that the Commission will not reimburse advisory committee members for travel or other expenses related to service on the committee. Such expenses are likely to be different for each committee member. Because membership on the committee is voluntary, none of the anticipated cost is mandatory.

Mr. Pitner has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the creation of a network through which the Commission will obtain information needed to determine the nature of competition in the natural gas pipeline industry, to assess the effect of current statutes and rules on competition in the industry, and to develop recommendations for changes that may be necessary to statutes or rules.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 7 days after publication in the *Texas Register* and should refer to Gas Utilities Docket No. 9637. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Steve Pitner at (512) 463-7938. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the new section under Texas Natural Resources Code, §81.052, which gives the Commission the authority to adopt all rules necessary for governing and regulating persons and their operations under the jurisdiction of the Commission, Article VI, Railroad Commission, Section 16, Appropriations Act, 2006 - 2007 Biennium, 79th Legislature, Regular Session, 2005, which requires the Commission to conduct a study that determines the extent to which competition exists in the Texas natural gas pipeline industry, Texas Government Code, §2001.031, which authorizes the Commission to appoint advisory committees to advise the Commission about contemplated rulemaking, and Texas Government Code, §§2110.001 - 2110.008, which mandate specific requirements for state agency advisory committees.

Article VI, Railroad Commission, Section 16, Appropriations Act, 2006 - 2007 Biennium, 79th Legislature, Regular Session, 2005, Texas Government Code, §2001.031, and Texas Government Code, §§2110.001 - 2110.008, are affected by the proposed new section.

Statutory authority: Texas Natural Resources Code, §81.052; Article VI, Railroad Commission, Section 16, Appropriations Act, 2006 - 2007 Biennium, 79th Legislature, Regular Session, 2005; and Texas Government Code, §2001.031, and §§2110.001 - 2110.008.

Cross-reference to statutes: Texas Natural Resources Code, §81.052; Article VI, Railroad Commission, Section 16, Appropriations Act, 2006 - 2007 Biennium, 79th Legislature, Regular Session, 2005; and Texas Government Code, §2001.031, and §§2110.001 - 2110.008.

Issued in Austin, Texas on January 24, 2006.

*§7.7201. Natural Gas Pipeline Competition Study Advisory Committee.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Committee--The Natural Gas Pipeline Competition Study Advisory Committee of the Commission.

(b) Establishment; duration. The Natural Gas Pipeline Competition Study Advisory Committee is hereby established. The committee is abolished on December 31, 2006, unless the Commission amends this subsection to establish a different date.

(c) Purpose and tasks. The purpose of the committee is to give the Commission the benefit of the members' collective business, technical, and operating expertise and experience to help the Commission review competition in the Texas intrastate pipeline industry, assess the effect of current statutes and rules on such competition, and develop recommendations for changes to statutes or rules that may be necessary. The committee shall report its advice and recommendations in writing to the Commission no later than July 1, 2006.

(d) Nominations for committee membership. The Commission shall make nominations for membership on the committee. All members of the committee serve at the pleasure of the Commission. If a member resigns or otherwise vacates his or her position prior to the end of his or her term, the Commission shall appoint a replacement who shall serve the remainder of the unexpired term.

(e) Reimbursement of members' expenses. The Commission shall not reimburse members for travel or other expenses related to service on the committee.

(f) Committee records. The committee shall maintain and make available to the Commission records of each committee meeting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2006.

TRD-200600380

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 475-1295

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# TITLE 25. HEALTH SERVICES

## PART 6. STATEWIDE HEALTH COORDINATING COUNCIL

### CHAPTER 571. HEALTH PLANNING AND RESOURCE DEVELOPMENT
### SUBCHAPTER B. HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE

**25 TAC §§571.11 - 571.13**

The Statewide Health Coordinating Council (council) proposes new §§571.11 - 571.13, relating to the composition, procedures and staffing of the Health Information Technology Advisory Committee (committee).

Senate Bill 45 (SB 45), 79th Texas Legislature, 2005, enacted Health and Safety Code, §104.0156, establishing the committee to report to the council.

Government Code, Chapter 2110, State Agency Advisory Committees, requires a state agency that is advised by an advisory committee to adopt rules relating to the purpose and tasks of the committee and the method by which the committee will report to the agency. Health and Safety Code, §104.0156, states that Chapter 2110 applies to the committee except for the provisions on the committee's size, composition and duration. The proposed sections implement Chapter 2110, with the exceptions of §2110.002, Composition of Advisory Committees, and §2110.008, Duration of Advisory Committees.

The proposed sections establish committee objectives (tasks and purposes), constitution, and procedures for reporting to the council. The council elects to put the committee size into rule form. The committee size is required to determine whether a quorum of committee members is present to deliberate topics in accordance with Government Code, Chapter 551 (Open Meetings Act).

Connie Turney, Project Director, has determined that for each year of the first five-year period that the proposed sections are in effect, there are no anticipated additional costs to state government in regards to the implementation of the proposed sections. There is no fiscal impact on local government.

Ms. Turney has also determined that for each year of the first five years the sections will be in effect, the public benefit anticipated as a result of enforcing the proposed sections will be the opportunity for better understanding of the purposes and tasks of the committee and the manner in which the committee reports to the council. Additionally, for the same period of time, Ms. Turney has determined that there should be no additional economic costs to persons required to comply with the sections as proposed.

There is no anticipated effect on small businesses or micro-businesses required to comply with the proposed sections. This was determined since the rules only affect the operation of the committee and the small businesses and micro-businesses will not be required to alter their business practices. There is no anticipated negative impact on local employment.

Comments on the proposed new sections may be submitted to Connie Turney, Project Director, Texas Statewide Health Coordinating Council, 1100 West 49th Street, Room M-660, Austin, Texas 78756-3199 no later than 30 days from the date that the proposed rules are published in the *Texas Register*.

The proposed new sections are authorized by the Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan, which includes issues relating to information technology; and Government Code, Chapter 2110, which requires a state agency to adopt rules relating to the agency's advisory committees.

The proposed sections affect Health and Safety Code, Chapter 104; and Government Code, Chapters 551 and 2110.

*§571.11. Definitions.*

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Committee--The Health Information Technology Advisory Committee, established by Senate Bill 45 (SB 45), 79th Texas Legislature.

(2) Committee Chair--The presiding officer elected by the committee members.

(3) Council--Statewide Health Coordinating Council.

(4) Council Chair--The presiding officer of the Statewide Health Coordinating Council.

(5) Personal or private interest--The committee member has a direct pecuniary (financial) interest in the matter. The term does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(6) Presiding officer--The highest-ranking officer elected by the committee or the temporary chair appointed by the council chair.

*§571.12. Objectives.*

The purpose of the committee is to serve as an advisory committee to the council. The committee shall:

(1) develop a long-range plan for health care information technology. The plan shall include the following topics:

(A) use of electronic medical records and electronic health records;

(B) computerized clinical support systems;

(C) computerized physician order entry;

(D) regional data sharing interchanges for health care information;

(E) other methods of incorporating information technology in pursuit of greater cost-effectiveness;

(F) better patient outcomes in health care;

(2) study the effect of health care information technology on price disparities in insurance coverage for residents of this state and submit a report to the council; and

(3) submit a written report in December of each year to the council, or as specified by the council. The annual report shall include:

(A) a list of meeting dates of the committee and any subcommittees;

(B) the attendance records of its members;

(C) a brief description of actions;

(D) a description of how the committee has accomplished the tasks given to the committee;

(E) anticipated activities of the committee for the next year; and

(F) the signature of the committee chair.

*§571.13. Committee Constitution.*

(a) The council shall appoint the committee members.

(b) The committee shall be composed of 11 members.

(c) Officers. The committee shall elect a presiding officer, the "committee chair". The committee shall elect a "vice-chair" and "secretary".

(1) The committee chair will preside at all committee meetings. If the committee chair is absent, the meeting may be presided over by the vice-chair. If both committee chair and vice-chair are absent, the secretary shall be the presiding officer.

(2) The presiding officer shall call meetings to order, appoint subcommittees of the committee as necessary, and generate reports as required by Health and Safety Code, Chapter 104.

(3) The committee chair may serve as ex-officio members of any subcommittee of the committee.

(d) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and shall recuse them self from the vote.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600478
Ben G. Raimer, M.D.
Chairman
Statewide Health Coordinating Council
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 458-7111 x6972

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# TITLE 28. INSURANCE

## PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 21. TRADE PRACTICES

### SUBCHAPTER J. PROHIBITED TRADE PRACTICES

**28 TAC §21.1007**

The Texas Department of Insurance proposes amendments to §21.1007, concerning restrictions on the use of underwriting guidelines based on a water damage claim(s), previous mold damage or a mold damage claim(s). The proposed amendments are necessary to implement changes enacted by the 79th Texas Legislature, Regular Session, in HB 941 and HB 1328. HB 941 amended Insurance Code Article 5.35-4 §2 by adding a definition of appliance. HB 1328 amended Insurance Code Article 21.21-11 §3(4)(A) by providing that the certificate of mold remediation issued to the property owner under Occupations Code §1958.154 must establish with reasonable certainty that the underlying cause of the mold at the property has been remediated. This proposal amends the definition of appliance-related claim contained in §21.1007(b)(5) to conform with HB 941. This proposal also includes an amendment that adds the words "with reasonable certainty" to the language of §21.1007(e)(1)(D)(i) to conform with HB 1328. The proposal also includes amendments to the section to delete an obsolete statutory citation and to change references from the Texas Board of Health and Texas Department of Health to Department of State Health Services. The former Texas Department of Health became part of the Department of State Health Services on September 1, 2004.

Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposed amendments. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Hamilton has further determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be better clarity in the regulation of property and casualty insurers' use of underwriting guidelines relating to appliance-related and mold remediation claims, by more clearly defining what constitutes an appliance, and by specifying that mold remediation certificates must certify with reasonable certainty that the underlying cause of the mold has been remediated, and by specifying that properly remediated mold damage claims cannot be considered in underwriting for residential property insurance. Any costs of compliance with the proposed amendments are the result of the legislative enactment of HB 941 and HB 1328. Accordingly, the proposed amendments will not have an impact on small and micro businesses. The department has considered the purposes of the relevant statutes, which are to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by the filing of a water damage claim or claims under a residential property insurance policy and to prohibit certain underwriting decisions based on previous mold damage or prior mold damage claims and has determined that it is neither legal nor feasible to waive or modify the requirements of this rule for small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 13, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of Chief Clerk.

The amendments are proposed under Insurance Code Articles 5.35-4 and 21.21-11 and §36.001. Article 5.35-4 §4 authorizes the Commissioner to adopt rules to accomplish the purposes of Article 5.35-4. Article 21.21-11 §4 authorizes the Commissioner to adopt rules as necessary to implement the provisions of Article 21.21-11. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 5.35-4 and 21.21-11

*§21.1007. Restrictions on the Use of Underwriting Guidelines Based On a Water Damage Claim(s), Previous Mold Damage or a Mold Damage Claim(s).*

(a) (No change.)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by [~~Section 2, Article 21.49-1 or Section~~] §823.003 of the Insurance Code if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Chapter 981.

(5) Appliance-related claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance. An appliance means a household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals. [~~An appliance-related claim shall not include the failure of a plumbing system or an external attachment to the appliance used to transport water to or from the plumbing system.~~]

(6) (No change.)

(c) (No change.)

(d) Restrictions on underwriting and rating and the inspection and certification process of appliance-related claims.

(1) - (2) (No change.)

(3) The following individuals who hold one or more of the following licenses are inspectors that may have the knowledge and experience in the remediation of water damage to inspect and certify the proper remediation of an appliance-related claim:

(A) - (B) (No change.)

(C) persons licensed as assessors or remediators by the Department of State Health Services [~~Texas Board of Health~~] pursuant to Chapter 1958 of the Occupations Code;

(D) (No change.)

(4) - (8) (No change.)

(e) Restrictions on the use of previous mold damage or a claim for mold damage in underwriting residential property insurance.

(1) An insurer shall not use an underwriting guideline regarding a residential property insurance policy based upon previous mold damage or a prior mold damage claim filed either by the applicant or on the covered property if:

(A) - (C) (No change.)

(D) the property was:

*(i)* remediated in accordance with the requirements specified in Chapter 1958, Subchapter D of the Occupations Code and any applicable rules promulgated by the Department of State Health Services [~~Texas Board of Health~~] pursuant to Chapter 1958 of the Occupations Code; and a Certificate of Mold Damage Remediation (MDR-1) is issued to the property owner under Section 1958.154 of the Occupations Code, which certifies with reasonable certainty that the underlying cause or causes of the mold at the property have been remediated; or

*(ii)* inspected by an independent mold assessor or adjuster, who is licensed to perform mold assessment in accordance with rules promulgated by the Department of State Health Services [~~Texas Board of Health~~] under Chapter 1958 of the Occupations Code, and the independent mold assessor or adjuster provides to the property owner written certification on a Certificate of Mold Damage Remediation (MDR-1) that based on the mold assessment inspection, the property does not contain evidence of mold damage.

(2) The Certificate of Mold Damage Remediation (MDR-1) is a form that is prescribed by the Department for use by mold remediators, assessors, and adjusters who will provide certifications. This form may be obtained from the Texas Department of Insurance website http://www.tdi.state.tx.us or by requesting such form from the Automobile/Homeowners Section or from the [~~Texas~~] Department of State Health Services.

(3) (No change.)

(f) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600467
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 463-6327

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## SUBCHAPTER FF. OBLIGATION TO CONTINUE PREMIUM PAYMENT AND COVERAGE AFTER NOTICE OF LOST GROUP ELIGIBILITY

**28 TAC §§21.4001 - 21.4003**

The Texas Department of Insurance proposes new Subchapter FF, §§21.4001 - 21.4003, concerning the obligation of certain group health coverage policyholders and contract holders to continue premium payment after notice of an individual's lost group eligibility. These new sections are necessary to implement §§1

and 2 of SB 51, enacted by the 79th Legislature, Regular Session, which added Insurance Code §§1301.0061 and 843.210, effective September 1, 2005. Sections 1301.0061 and 843.210 apply to group preferred provider organization policies and group health maintenance organization contracts entered into or renewed on or after January 1, 2006. Subsequent to the enrollment of SB 51, the department received requests for clarification of this new legislation. In response, the proposed rule outlines the scope of a group policyholder or contract holder's liability for premium payment; defines certain terms; and details means of compliance with, as well as limitations and exceptions to, the statute. The various limitations and exceptions allow some relief from the difficulty a group policyholder or contract holder may face in providing notice of late-month termination, as well as prevent costly and unnecessarily duplicative coverage of individuals replacing health coverage.

Proposed §21.4001 explains the purpose and scope of this subchapter, clarifying that the subchapter does not impose requirements on a group policyholder, a group contract holder, or a health carrier when an entire group ends coverage under a health benefit plan or when an individual terminates coverage without leaving the group eligible for coverage. Proposed §21.4002 contains definitions relevant to this subchapter; of particular significance, it defines "month" in a manner allowing the parties to define by contract the start and end of the monthly period.

Proposed §21.4003(a) restates the duties the bill imposes on a health carrier and a group policyholder or group contract holder under a health benefit plan contract. Subsections (b) and (c) define a receipt date for notice tendered by mail and establish a five-day period during which immediate written notification that an individual lost eligibility for group coverage during the previous month will avoid additional premium payment and coverage obligations.

Subsection (d) recognizes that in some instances, a group policyholder or group contract holder will be able to notify a health carrier that an individual will no longer be part of the group eligible for coverage prior to the date the individual actually leaves the group. Accordingly, the subsection allows for termination of coverage on the date the individual leaves the group if the employer provides at least 30 days prior notice. Subsection (e) allows a group policyholder or group contract holder and a health carrier to eliminate their premium payment and coverage responsibilities if the individual no longer a part of the group eligible for coverage under the plan elects to terminate coverage and obtains coverage under a new health benefit plan that takes effect immediately upon termination of coverage under the group health benefit plan. The subsection authorizes a health carrier to require a group policyholder or group contract holder seeking to avoid payment of additional premium for an individual to provide proof of the new coverage and to agree to be responsible for payment of premium if the individual's new health benefit plan does not cover the individual for the entire period for which the health carrier and the group policyholder or group contract holder are responsible for premium payment and coverage. The subsection also clarifies that the group policyholder or group contract holder and the health carrier remain responsible for premium payment and coverage should the individual's new health benefit plan fail to provide coverage during the period for which the rule otherwise obligates them to continue premium payment and coverage.

Subsections (f) and (g) clarify that the statute does not apply to certain continuation coverage and to health benefit plans where the group policyholder or group contract holder does not make any contribution to the payment of premium for individuals covered under the plan. Subsection (h) ends the obligation to pay premium and to provide coverage upon an individual's demise.

Jennifer Ahrens, Associate Commissioner for Life, Health & Licensing, has determined that, for each year of the first five years the proposed sections will be in effect, there will be a reduction in costs of premium payments for duplicative coverage to the state and to local governments as a result of enforcing or administering the rule, since some governmental entities provide health coverage to their employees through health plans subject to §§1301.0061 and 843.210. The amount of savings is impossible to estimate as it will depend primarily on the number of individuals leaving state and local governmental employment during the five-year time period and the circumstances of their severance, factors unknown at this time. Ms. Ahrens also estimates that, due to private group policyholders and/or contract holders providing health coverage to their employees through health plans subject to §§1301.0061 and 843.210, enforcing or administering the rule will result in a similar reduction in costs of premium payments for duplicative coverage within local economies across the state. The same factors affecting state and local governments affect private group policyholders and group contract holders, and thus the savings to local economies are currently equally impossible to estimate. It is thus impossible at this time to determine whether the savings as a result of the proposal will produce a measurable effect on local employment or the local economy.

Ms. Ahrens has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be more efficient and equitable administration of the requirements imposed by new Insurance Code §§1301.0061 and 843.210, resulting in a reduction in premium costs for unnecessary overlaps in coverage of individuals losing eligibility for coverage through a group policyholder or group contract holder. Any economic costs to comply with the proposed rule result from the enactment of Insurance Code §§1301.0061 and 843.210, and are not the result of the proposed rule. There is no anticipated difference in the cost of compliance between large and small or micro businesses as a result of the proposed sections. Even if the proposed rule would have an adverse effect on small or micro businesses, it is neither legal nor feasible to waive the requirements of the sections for small or micro businesses because the Insurance Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 13, 2006, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Jennifer Ahrens, Associate Commissioner, Life, Health & Licensing Program, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The department will consider the adoption of the proposed new sections in a public hearing under Docket Number 2636, scheduled for 10:00 a.m. on February 21, 2006, in Room 100 at the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701.

The new sections are proposed under Insurance Code §§1301.007, 843.151 and 36.001. Section 1301.007 pro-

vides that the commissioner shall adopt rules as necessary to implement Chapter 1301 and to ensure reasonable accessibility and availability of preferred provider benefits and basic level of benefits to residents of this state. Section 843.151 provides that the commissioner may adopt reasonable rules as necessary and proper to fully implement Insurance Code Chapters 843 and Article 20A (recodified as Chapter 1271). Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following sections are affected by this proposal: Insurance Code §§1301.0061,1301.007, 843.151, and 843.210

*§21.4001. Purpose and Scope.*

This subchapter applies to group preferred provider benefit plans and evidences of coverage issued pursuant to Insurance Code Chapters 843 and 1301. The subchapter outlines a group policyholder's or group contract holder's liability for premium payment, and a health carrier's obligation to provide coverage, from the time an individual insured or enrollee loses eligibility for coverage as part of a particular group until the end of the month in which the policyholder or contract holder notifies the health carrier that the individual is no longer part of the group eligible for coverage. The subchapter does not impose requirements on a group policyholder, a group contract holder, or a health carrier when an entire group ends coverage under a health benefit plan or when an individual terminates coverage without leaving the group eligible for coverage.

*§21.4002. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Evidence of coverage--Any certificate, agreement, or contract, including a blended contract, that:

(A) is issued to an enrollee; and

(B) states the coverage to which the enrollee is entitled.

(2) Health benefit plan--A preferred provider benefit plan or health maintenance organization evidence of coverage or other group health benefit plan issued by a health maintenance organization.

(3) Health carrier--A health insurer issuing a preferred provider benefit plan, as defined in Insurance Code §1301.001(9), or a health maintenance organization, as defined in Insurance Code §843.002(14).

(4) Health insurer--A life, health, and accident insurance company, health and accident insurance company, health insurance company, or other company operating under Insurance Code Chapters 841, 842, 884, 885, 941, 982, or 1501 that is authorized to issue, deliver, or issue for delivery in this state health insurance policies.

(5) Health maintenance organization--A person who arranges for or provides to enrollees on a prepaid basis a health care plan, a limited health care service plan, or a single health care service plan.

(6) Month--The period from a date in a calendar month to the corresponding date in the succeeding calendar month. If the succeeding calendar month does not have a corresponding date, the period ends on the last day of the succeeding calendar month.

(7) Preferred provider benefit plan--Any policy or contract issued pursuant to Insurance Code Chapter 1301.

*§21.4003. Group Policyholder Liability for Premiums.*

(a) A contract between a health carrier and a group policyholder or group contract holder under a health benefit plan contract must provide that:

(1) the group policyholder or group contract holder, as described in Insurance Code Chapter 1251, is liable for an individual insured's or enrollee's premiums from the time the individual is no longer part of the group eligible for coverage under the plan until the end of the month in which the policyholder or contract holder notifies the health carrier that the individual is no longer part of the group eligible for coverage under the plan; and

(2) the individual remains covered under the plan until the end of the period specified in paragraph (1) of this subsection.

(b) If a health carrier accepts the notice referenced in subsection (a)(1) of this section by mail, the date the group policyholder or group contract holder tenders the notice to the postal service is the date the policyholder or contract holder notifies the health carrier.

(c) A group policyholder or group contract holder and a health carrier is not subject to subsection (a) of this section if the policyholder or contract holder notifies the health carrier within five days, not including a Saturday, Sunday, or legal holiday, after the end of each month that an individual lost eligibility for group coverage under the plan during the previous month. During this additional notification period, the policyholder or contract holder must transmit the notification of an individual's loss of eligibility during the previous month by a method:

(1) agreed upon by the policyholder or contract holder and the carrier, and

(2) which provides immediate written notification, such as an internet portal, electronic mail, or telefacsimile.

(d) Subsection (a) of this section does not apply if a group policyholder or group contract holder notifies a health carrier that an individual will no longer be part of the group eligible for coverage at least 30 days prior to the date the individual will no longer be part of the group eligible for coverage.

(e) A group policyholder or group contract holder and a health carrier is not subject to subsection (a) of this section and may terminate an individual insured's or enrollee's coverage under a group health benefit plan at the time the individual is no longer a part of the group eligible for coverage under the plan, if the individual elects to terminate coverage under the plan and obtains coverage under a new health benefit plan that takes effect immediately upon termination of coverage under the group health benefit plan. A health carrier may require a group policyholder or group contract holder seeking to avoid payment of additional premium for an individual no longer part of the group eligible for coverage to provide proof of the new coverage and to agree to be responsible for payment of premium if the individual's new health benefit plan does not cover the individual from the termination of the health carrier's coverage until the end of the month in which the group policyholder or group contract holder notifies the health carrier that the individual is no longer part of the group eligible for coverage. In addition, the group policyholder or group contract holder and the health carrier remain responsible for compliance with Insurance Code §§843.210 and 1301.0061 if the individual's new health benefit plan does not cover the individual from the termination of the health carrier's coverage until the end of the month in which the group policyholder or group contract holder notifies the health carrier that the individual is no longer part of the group eligible for coverage.

(f) Subsection (a) of this section does not apply to coverage a health carrier extends to an individual in compliance with 29 U.S.C. §1161 et seq. (COBRA), Insurance Code Chapter 1251, Subchapter F, or any other federal or state continuation of coverage requirement that

allows an individual insured or enrollee, upon termination of eligibility from a group, to pay premium and extend the period of group health benefit plan coverage after the individual has left employment or otherwise no longer qualifies as a member of the group.

(g) Subsection (a) of this section does not apply to a health benefit plan for which a group policyholder or group contract holder does not contribute to the payment of any individual insured's or enrollee's premium.

(h) Notwithstanding subsection (a) of this section, in the event of the individual insured's or enrollee's death, a group policyholder or group contract holder is not liable for an individual insured's or enrollee's premiums, and the individual does not remain covered under the plan, after the later of the date of the individual insured's or enrollee's:

(1) death; or

(2) receipt of the last covered service under the plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600475
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 463-6327

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# PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

## CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Department of Insurance, Division of Workers' Compensation proposes the repeal of §§133.1, 133.2, 133.100, 133.104 - 133.106, 133.300 - 133.304, and 133.401 - 133.403, concerning medical billing and processing, and production of documents. The repeal of these sections is necessary for the Division to propose an extensive reorganization of Chapter 133, and Chapter 134 to eliminate redundancies in existing rules and clarify medical billing and processing procedures. This reorganization includes the proposed repeal of current medical billing, processing and reimbursement rules in Chapters 133 and replacement with clarified and reorganized rules which incorporate requirements of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005.

The Division simultaneously proposes new §§133.1 - 133.3, 133.10, 133.20, 133.200, 133.210, 133.230, 133.240, 133.250, 133.260, 133.270, and 133.280, published elsewhere in this issue of the *Texas Register*, concerning medical billing and processing, including new medical billing timeframes. The proposed new rules are necessary to implement, on a permanent basis, portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The proposed rules will permit compliance with statutory changes to the Labor Code §408.027 and new §408.0271, and also provide billing and processing direction for participants in a workers' compensation health care network established under Insurance Code Chapter 1305. This proposal also organizes the rules regarding medical billing and processing to clarify and streamline the process. This will enable system participants to easily access specific portions of the medical billing rules, which are logically organized and follow the billing and reimbursement process. The proposed rules also minimize micro-management of the process by providing guidance and direction rather than specific, detailed instructions that required adherence. This will allow system participants more flexibility in developing their medical billing and bill review processes. In addition, the proposal relies on the statutorily required Medicare reimbursement structures, and incorporates concepts from TDI managed care rules, and eliminates many of the duplicative Division instructions thus providing consistency and standardization for workers' compensation system benefits with other health care delivery systems.

Allen McDonald, Director, Medical Review, has determined that for each year of the first five years the proposed repeals will be in effect, there will be no fiscal impact to state and local governments as a result of the repeals. There will be no measurable effect on local employment or the local economy as a result of the proposed repeals.

Mr. McDonald has also determined that for each year of the first five years the proposed repeals are in effect the public benefits anticipated as a result of the repeals, in conjunction with adoption of proposed new Chapter 133 rules, will be a more efficient medical billing and reimbursement process. All system participants will benefit from the clarification and simplification of the proposed new Chapter 133 and 134 rules.

There are no anticipated costs to system participants as a result of the proposed repeals. There is no difference in the cost of compliance between a large and small business as a result of the proposed repeals. Based on the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 13, 2006 to Norma Garcia, General Counsel, MS 4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Allen McDonald, MS 40, Director of Medical Review, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

## SUBCHAPTER A. GENERAL RULES FOR REQUIRED REPORTS

**28 TAC §133.1, §133.2**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Labor Code §§408.027, 408.0271, 402.00111 and 402.061. Section 408.027 provides

that a carrier may request additional documentation to clarify a provider's charges at any time during the 45-day period. Section 408.0271 permits carriers to request refunds when health care services provided to an injured employee are determined by the carrier to be inappropriate. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §408.027 and §408.0271.

*§133.1. Definitions for Chapter 133, Benefits--Medical Benefits.*

*§133.2. Sharing Medical Reports and Test Results.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600482
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

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## SUBCHAPTER B. REQUIRED REPORTS

**28 TAC §§133.100, 133.104 - 133.106**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Labor Code §§408.027, 408.0271, 402.00111 and 402.061. Section 408.027 provides that a carrier may request additional documentation to clarify a provider's charges at any time during the 45-day period. Section 408.0271 permits carriers to request refunds when health care services provided to an injured employee are determined by the carrier to be inappropriate. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §408.027 and §408.0271.

*§133.100. Required Medical Reports.*

*§133.104. Consultant Medical Reports.*

*§133.105. Physical or Occupational Therapy Report.*

*§133.106. Fair and Reasonable Fees for Required Reports and Records.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600483
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

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## SUBCHAPTER D. DISPUTE AND AUDIT OF BILLS BY INSURANCE CARRIERS

**28 TAC §§133.300 - 133.304**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Labor Code §§408.027, 408.0271, 402.00111 and 402.061. Section 408.027 provides that a carrier may request additional documentation to clarify a provider's charges at any time during the 45-day period. Section 408.0271 permits carriers to request refunds when health care services provided to an injured employee are determined by the carrier to be inappropriate. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §408.027 and §408.0271.

*§133.300. Insurance Carrier Receipt of Medical Bills from Health Care Providers.*

*§133.301. Retrospective Review of Medical Bills.*

*§133.302. Preparation for an Onsite Audit.*

*§133.303. Onsite Audits.*

*§133.304. Medical Payments and Denials.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600484
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

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## SUBCHAPTER E. COMPELLING PRODUCTION OF DOCUMENTS

**28 TAC §§133.401 - 133.403**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under the Labor Code §§408.027, 408.0271, 402.00111 and 402.061. Section 408.027 provides that a carrier may request additional documentation to clarify a provider's charges at any time during the 45-day period. Section 408.0271 permits carriers to request refunds when health care services provided to an injured employee are determined by the carrier to be inappropriate. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §408.027 and §408.0271.

*§133.401. Orders for Production of Documents.*

*§133.402. Delivery of Order; Compliance.*

*§133.403. Noncompliance; Enforcement.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600485
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

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## CHAPTER 133. MEDICAL BILLING AND PROCESSING

The Texas Department of Insurance, Division of Workers' Compensation proposes new §§133.1 - 133.3, 133.10, 133.20, 133.200, 133.210, 133.230, 133.240, 133.250, 133.260, 133.270, and 133.280, concerning medical billing and processing, including new medical billing timeframes. The proposed new rules are necessary to implement, on a permanent basis, portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The proposed rules will permit compliance with statutory changes to the Labor Code §408.027 and new §408.0271, and also provide billing and processing direction for participants in a workers' compensation health care network established under Insurance Code Chapter 1305. The primary focus of the proposed rules is to include the statutorily revised medical billing timeframes. These proposed rules do not apply to political subdivisions with contractual relationships under Labor Code §504.053(b)(2). If adopted the proposed rules will replace the emergency rules adopted by the Commissioner of Workers' Compensation on November 3, 2005, and published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7621).

The proposed rules are designed to minimize micro-management of the system, utilize existing Medicare reimbursement structures, and incorporate concepts from Texas Department of Insurance (TDI) managed care rules for consistency and standardization. The proposed rules also accommodate eBill initiatives by identifying forms and processes compatible in both paper and electronic processes. Additionally, the Division is proposing an extensive reorganization of Chapter 133, in conjunction with the revision of Chapter 134, to eliminate redundancies in existing rules and clarify billing and processing procedures. This reorganization includes the proposed repeal of several current billing, processing and reimbursement rules in Chapters 133 and 134, published elsewhere in this issue of the *Texas Register*.

In conformity with changes by HB 7 to Labor Code §408.027 and §408.0271, the proposed rules provide the following: for reimbursement, a health care provider must submit a medical bill to the insurance carrier on or before the 95th day after the date of service; insurance carriers must pay, reduce, deny or determine to audit a health care provider's medical bill not later than the 45th day after receipt of the medical bill; an insurance carrier may request additional documentation necessary to clarify the health care provider's charges at any time during the 45-day review period and the health care provider must provide the requested documentation not later than the 15th day after the date of receipt of the insurance carrier's request; procedures and time frames for audits performed by an insurance carrier; and procedures and time frames for insurance carriers to request refunds from health care providers.

This proposal also organizes the rules regarding medical billing and processing to clarify and streamline the process. This will enable system participants to easily access specific portions of the medical billing rules, which are now logically organized following the billing and reimbursement process.

The proposed rules also minimize micro-management of the process by providing guidance and direction rather than specific, detailed instructions. This will allow system participants more flexibility in developing their medical billing and bill review processes. In addition, the proposal relies on the statutorily required Medicare reimbursement structures, and incorporates concepts from TDI managed care rules, and eliminates many of the duplicative Division instructions thus providing consistency and standardization for workers' compensation system benefits with other health care delivery systems. The proposed rules also contemplate the adoption of statutorily required treatment guidelines and incorporate this concept into the bill review process. The proposed rules also establish standards for reconsideration of medical bills and refunds of overpayments to health care providers.

Proposed Subchapter A, §§133.1 - 133.3, provides general provisions for medical billing and processing, including applicability of the chapter, definitions, and communications between health care providers and carriers. Proposed Subchapter B sets out the billing procedures for health care providers by addressing the billing format, and submission of the medical bill. Proposed Subchapter C addresses medical bill processing and audits by insurance carriers. Proposed §133.200 sets out the procedures a carrier should follow upon receipt of a medical bill from a provider. Proposed §133.210 addresses medical documentation. Proposed §133.230 provides procedures when an audit is conducted. Proposed §133.240 addresses medical payments and denials. Proposed §133.250 describes the procedures for

reconsideration of payment of medical bills. Proposed §133.260 addresses refunds. Proposed §133.270 addresses when an injured employee may request reimbursement for health care for which the injured employee has paid. Proposed §133.280 describes the procedures for an employer to follow for reimbursement of health care paid.

Insurance Code Chapter 1305 establishes that a medical bill for services provided through a workers' compensation health care network shall be paid, reduced, denied or audited in accordance with Labor Code §408.027. The proposed rules clarify that the medical billing and bill reviewing processes, including coding and reporting requirements, apply to services provided to an injured employee subject to a workers compensation health care network as established under Insurance Code Chapter 1305, with any exceptions noted.

Allen McDonald, Director, Medical Review, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. McDonald has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be a more efficient medical billing and reimbursement process. All system participants will benefit from the clarification and simplification of these rules. Additionally, the rules support the Division's efforts to establish electronic medical billing as the standard in the Texas Workers' Compensation System.

Insurance carriers may realize a positive financial impact as a result of a standardized and streamlined process, which include specific requirements for submission of medical bills and documentation, communication between insurance carriers and health care providers and timelines for payment or denial decisions.

Injured employees will benefit from the additional information provided by receiving Explanation of Benefits (EOB). This additional information will allow injured employees to understand the reimbursement status of medical bills associated with their care and become aware early on of any possible liabilities. Injured employees will benefit from an established reimbursement process when paying out of pocket for health care.

Health care providers benefit through an improved billing and reimbursement system that aligns more closely with other health care systems, increasing standardization and reducing the administrative complexity of the system. Reduced timeframes encourage quicker resolution of medical bills and increased interim reimbursement amounts for medical claims under audit decrease financial burdens for health care providers. Future application of provisions related to treatment guidelines and retrospective review of medical bills should increase surety of payment for health care providers that provide services that fall within the treatment guidelines.

It is anticipated that carriers, providers and pharmacies will incur programming costs as a result of the proposed rules. In proposed §133.10, pharmacists are required to submit bills using the National Council for Prescription Drug Programs Claim Form rather than the TWCC 66. Many pharmacists are already using this form in other medical billing systems but will need to conform the workers' compensation billing system to this new form. Health care providers will need to make programming changes to accommodate the changes to the billing process. Carriers will need to make programming changes as a result of a change in timeframes and procedures. It is anticipated that the programming changes will be a one-time cost and will vary depending on the complexity of the system utilized and on the carrier. According to statewide data collected by the Texas Workforce Commission from November 2003 through November 2005, the mean hourly wage rate for a computer programmer is $30.78. It is estimated that the time required for making the various programming changes could be less than an hour to as much as four hours.

It is also anticipated that carriers will incur an incremental additional cost of providing an EOB to injured employees for all medical bills. An estimated mailing cost of 25 cents per EOB will be the major expense as a result of this requirement since carriers are already required to provide injured employees EOBs in certain instances. If current bill processing costs range from $8 - $10 per bill, an increase of 2.5% to 3.1% in cost per bill would result. If carriers elect to provide EOB information online, as offered by many managed care organizations, postage costs would not be incurred. The costs will vary by carrier depending on the number of medical bills processed and method elected by the carrier to provide the EOB. The Division anticipates only minimal reprogramming costs will be incurred by carriers to produce EOBs for each bill. As previously stated, the mean hourly wage rate for a computer programmer is $30.78. These reprogramming costs will be proportional to the complexity of the specific system employed by the carriers.

It is not anticipated that there will be any other costs associated with the proposal since the processes are based on similar processes that the system participants are using in other health care systems.

Any additional economic costs currently exist under existing rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses. Even if the proposed sections would have an adverse effect on small or micro-businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro-businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 13, 2006, to Norma Garcia, General Counsel, MS 4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comment must be simultaneously submitted to Allen McDonald, Director of Medical Review, MS 40, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

## SUBCHAPTER A. GENERAL RULES FOR MEDICAL BILLING AND PROCESSING

### 28 TAC §§133.1 - 133.3

The new sections are proposed under Labor Code §§401.023, 401.024, 406.010, 408.003, 408.025, 408.0251, 408.027, 408.0271, 413.007, 413.011, 413.0111, 413.015, 413.019,

413.042, 413.053, 402.00111, and 402.061. Section 401.023 provides for the computation of an interest rate used in the calculation of interest due on late payments. Section 401.024 authorizes the Commissioner by rule to permit or require the transmission of information through electronic means. Section 406.010 authorizes the Commissioner to adopt rules necessary to specify the requirements for carriers to provide claims service. Section 408.003 requires the carrier to reimburse an employer for the amount of benefits paid directly to an injured employee to which the employee was entitled. Section 408.025 requires the Commissioner to adopt requirements for reports and records required to be filed within the Workers' Compensation System. Section 408.0251 requires the Commissioner to adopt rules regarding the electronic submission and processing of medical bills. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 408.0271 permits carriers to request refunds from providers upon the carrier's determination that rendered health care services were inappropriate, permits providers to appeal that determination to the carrier, and requires providers to remit payment upon final adverse determination by the carrier. Section 413.007 requires the Division to maintain a statewide database of medical charges, actual payments, and treatment protocols. Section 413.011 requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. Section 413.0111 provides for the contractual use of agents and assignees by pharmacies to process claims and act on behalf of the pharmacies. Section 413.015 permits a carrier to contract with another entity to forward payments for medical services. Section 413.019 provides for the payment of interest on late payments by the carrier or provider after the 60th day a bill is received by the carrier, or after the 60th day a refund request is received by the provider. Section 413.042 specifies the limited circumstances under which a provider may seek reimbursement from an injured employee. Section 413.053 authorizes the Commissioner to establish standards for reporting and billing, governing both form and content. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following sections are affected by this proposal: Labor Code §§401.023, 401.024, 406.010, 408.003, 408.025, 408.0251, 408.027, 408.0271, 413.007, 413.011, 413.0111, 413.015, 413.019, 413.042, 413.053.

*§133.1. Applicability of Medical Billing and Processing.*

(a) This chapter applies to medical billing and processing for health care services provided to injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305, and to injured employees not subject to such networks, with the following exceptions pertaining only to health care services provided to an injured employee subject to a workers' compensation health care network established under Chapter 1305:

(1) Subchapter D of this chapter (relating to Dispute of Medical Bills);

(2) §133.210(f) of this chapter (relating to Medical Documentation); and

(3) §133.240(b) and (i) of this chapter (relating to Medical Payments and Denials).

(b) This chapter applies to all health care provided on or after May 1, 2006. For health care provided prior to May 1, 2006, medical billing and processing shall be in accordance with the rules in effect at the time the health care was provided.

*§133.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bill review--Review of any aspect of a medical bill, including retrospective review, in accordance with the Act, rules, and the appropriate Division fee and treatment guidelines.

(2) Complete medical bill--A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter (relating to Required Billing Forms), or as specified for electronic medical bills in Chapter 135 of this title (relating to Electronic Medical Billing, Reimbursement, and Documentation).

(3) Emergency--Either a medical or mental health emergency as follows:

(A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

*(i)* placing the patient's health or bodily functions in serious jeopardy, or

*(ii)* serious dysfunction of any body organ or part;

(B) a mental health emergency is a condition that could reasonably be expected to present danger to the person experiencing the mental health condition or another person.

(4) Final action on a medical bill--

(A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or

(B) denying a charge on the medical bill.

(5) Health care provider agent--A person or entity that the health care provider contracts with or utilizes for the purpose of fulfilling the health care provider's obligations for medical bill processing under the Labor Code or Division rules.

(6) Insurance carrier agent--A person or entity that the insurance carrier contracts with or utilizes for the purpose of providing claims services or fulfilling the insurance carrier's obligations for medical bill processing under the Labor Code or Division rules.

(7) Pharmacy processing agent--A person or entity that contracts with a pharmacy in accordance with Labor Code §413.0111, establishing an agent or assignee relationship, to process claims and act on behalf of the pharmacy under the terms and conditions of a contract related to services being billed. Such contracts may permit the agent or assignee to submit billings, request reconsideration, receive reimbursement, and seek medical dispute resolution for the pharmacy services billed.

(8) Retrospective review--The process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

*§133.3. Communication Between Health Care Providers and Insurance Carriers.*

(a) Any communication between the health care provider and insurance carrier related to medical bill processing shall be of sufficient, specific detail to allow the responder to easily identify the information required to resolve the issue or question related to the medical bill. Generic statements that simply state a conclusion such as "insurance carrier improperly reduced the bill" or "health care provider did not document" or other similar phrases with no further description of the factual basis for the sender's position does not satisfy the requirements of this section.

(b) Communication between the health care provider and insurance carrier related to medical bill processing shall be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery.

(c) Health care providers and insurance carriers shall maintain, in a reproducible format, documentation of communications related to medical bill processing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

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Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4288

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## SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

**28 TAC §133.10, §133.20**

The new sections are proposed under Labor Code §§401.023, 401.024, 406.010, 408.003, 408.025, 408.0251, 408.027, 408.0271, 413.007, 413.011, 413.0111, 413.015, 413.019, 413.042, 413.053, 402.00111, and 402.061. Section 401.023 provides for the computation of an interest rate used in the calculation of interest due on late payments. Section 401.024 authorizes the Commissioner by rule to permit or require the transmission of information through electronic means. Section 406.010 authorizes the Commissioner to adopt rules necessary to specify the requirements for carriers to provide claims service. Section 408.003 requires the carrier to reimburse an employer for the amount of benefits paid directly to an injured employee to which the employee was entitled. Section 408.025 requires the Commissioner to adopt requirements for reports and records required to be filed within the Workers' Compensation System. Section 408.0251 requires the Commissioner to adopt rules regarding the electronic submission and processing of medical bills. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 408.0271 permits carriers to request refunds from providers upon the carrier's determination that rendered health care services were inappropriate, permits providers to appeal that determination to the carrier, and requires providers to remit payment upon final adverse determination by the carrier. Section 413.007 requires the Division to maintain a statewide database of medical charges, actual payments, and treatment protocols. Section 413.011 requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. Section 413.0111 provides for the contractual use of agents and assignees by pharmacies to process claims and act on behalf of the pharmacies. Section 413.015 permits a carrier to contract with another entity to forward payments for medical services. Section 413.019 provides for the payment of interest on late payments by the carrier or provider after the 60th day a bill is received by the carrier, or after the 60th day a refund request is received by the provider. Section 413.042 specifies the limited circumstances under which a provider may seek reimbursement from an injured employee. Section 413.053 authorizes the Commissioner to establish standards for reporting and billing, governing both form and content. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following sections are affected by this proposal: Labor Code §§401.023, 401.024, 406.010, 408.003, 408.025, 408.0251, 408.027, 408.0271, 413.007, 413.011, 413.0111, 413.015, 413.019, 413.042, 413.053.

*§133.10. Required Billing Forms/Formats.*

(a) Health care providers shall submit medical bills for payment:

(1) on standard forms used by the Centers for Medicare and Medicaid Services (CMS);

(2) on applicable forms prescribed for pharmacists and dentists specified in subsections (b) and (c) of this section; or

(3) in electronic format in accordance with Subchapter F of this chapter (relating to Electronic Medical Billing, Reimbursement, and Documentation).

(b) Pharmacists shall submit bills using the current National Council for Prescription Drug Programs (NCPDP) Universal Claim Form (UCF).

(c) Dentists shall submit bills using the current American Dental Association claim form.

(d) All information submitted on required billing forms must be legible and completed in accordance with Division instructions.

*§133.20. Medical Bill Submission by Health Care Provider.*

(a) The health care provider shall submit all medical bills to the insurance carrier except when billing the employer in accordance with subsection (j) of this section.

(b) A health care provider shall not submit a medical bill later than the 95th day after the date the services are provided.

(c) A health care provider shall include correct billing codes from the applicable Division fee guidelines in effect on the date(s) of service when submitting medical bills.

(d) The health care provider that provided the health care shall submit its own bill, unless:

(1) the health care was provided as part of a return to work rehabilitation program in accordance with the Division fee guidelines in effect for the dates of service;

(2) the health care was provided by an unlicensed individual under the direct supervision of a licensed health care provider, in which case the supervising health care provider shall submit the bill;

(3) the health care provider contracts with an agent for purposes of medical bill processing, in which case the health care provider agent may submit the bill; or

(4) the health care provider is a pharmacy that has contracted with a pharmacy processing agent for purposes of medical bill processing, in which case the pharmacy processing agent may submit the bill.

(e) A medical bill must be submitted:

(1) for an amount that does not exceed the health care provider's usual and customary charge for the health care provided in accordance with Labor Code §413.011; and

(2) in the name of the licensed health care provider that provided the health care or that provided direct supervision of an unlicensed individual who provided the health care.

(f) Health care providers shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills).

(g) Health care providers may correct and resubmit as a new bill an incomplete bill that has been returned by the insurance carrier.

(h) Not later than the 15th day after receipt of a request for additional medical documentation, a health care provider shall submit to the insurance carrier:

(1) any requested additional medical documentation related to the charges for health care rendered; or

(2) a notice the health care provider does not possess requested medical documentation.

(i) The health care provider shall indicate on the medical bill if documentation is submitted related to the medical bill.

(j) The health care provider may elect to bill the injured employee's employer if the employer has indicated a willingness to pay the medical bill(s). Such billing is subject to the following:

(1) A health care provider who elects to submit medical bills to an employer waives, for the duration of the election period, the rights to:

(A) prompt payment, as provided by Labor Code §408.027;

(B) interest for delayed payment as provided by Labor Code §413.019; and

(C) medical dispute resolution as provided by Labor Code §413.031.

(2) When a health care provider bills the employer, the health care provider shall submit an information copy of the bill to the insurance carrier, which clearly indicates that the information copy is not a request for payment from the insurance carrier.

(3) When a health care provider bills the employer, the health care provider must bill in accordance with the Division's fee guidelines and §133.10 of this chapter (relating to Required Billing Forms/Formats).

(4) A health care provider shall not submit a medical bill to an employer for charges an insurance carrier has reduced, denied or disputed.

(k) A health care provider shall not submit a medical bill to an injured employee for all or part of the charge for any of the health care provided, except as an informational copy clearly indicated on the bill, or in accordance with subsection (l) of this section. The information copy shall not request payment.

(l) The health care provider may only submit a bill for payment to the injured employee in accordance with:

(1) Labor Code §413.042;

(2) Insurance Code §1305.451; or

(3) §134.504 of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600476
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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For further information, please call: (512) 804-4288



## SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

**28 TAC §§133.200, 133.210, 133.230, 133.240, 133.250, 133.260, 133.270, 133.280**

The new sections are proposed under Labor Code §§401.023, 401.024, 406.010, 408.003, 408.025, 408.0251, 408.027, 408.0271, 413.007, 413.011, 413.0111, 413.015, 413.019, 413.042, 413.053, 402.00111, and 402.061. Section 401.023 provides for the computation of an interest rate used in the calculation of interest due on late payments. Section 401.024 authorizes the Commissioner by rule to permit or require the transmission of information through electronic means. Section 406.010 authorizes the Commissioner to adopt rules necessary to specify the requirements for carriers to provide claims service. Section 408.003 requires the carrier to reimburse an employer for the amount of benefits paid directly to an injured employee to which the employee was entitled. Section 408.025 requires the

Commissioner to adopt requirements for reports and records required to be filed within the Workers' Compensation System. Section 408.0251 requires the Commissioner to adopt rules regarding the electronic submission and processing of medical bills. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 408.0271 permits carriers to request refunds from providers upon the carrier's determination that rendered health care services were inappropriate, permits providers to appeal that determination to the carrier, and requires providers to remit payment upon final adverse determination by the carrier. Section 413.007 requires the Division to maintain a statewide database of medical charges, actual payments, and treatment protocols. Section 413.011 requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. Section 413.0111 provides for the contractual use of agents and assignees by pharmacies to process claims and act on behalf of the pharmacies. Section 413.015 permits a carrier to contract with another entity to forward payments for medical services. Section 413.019 provides for the payment of interest on late payments by the carrier or provider after the 60th day a bill is received by the carrier, or after the 60th day a refund request is received by the provider. Section 413.042 specifies the limited circumstances under which a provider may seek reimbursement from an injured employee. Section 413.053 authorizes the Commissioner to establish standards for reporting and billing, governing both form and content. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following sections are affected by this proposal: Labor Code §§401.023, 401.024, 406.010, 408.003, 408.025, 408.0251, 408.027, 408.0271, 413.007, 413.011, 413.0111, 413.015, 413.019, 413.042, 413.053.

*§133.200. Insurance Carrier Receipt of Medical Bills from Health Care Providers.*

(a) Upon receipt of medical bills submitted in accordance with §133.10(a)(1) and (2) of this chapter (relating to Required Medical Forms/Formats), an insurance carrier shall evaluate each medical bill for completeness as defined in §133.2 of this chapter (relating to Definitions).

(1) Insurance carriers shall not return medical bills that are complete, unless the bill is a duplicate bill.

(2) Within 30 days after the day it receives a medical bill that is not complete as defined in §133.2 of this chapter, an insurance carrier shall:

(A) complete the bill by adding missing information already known to the insurance carrier, except for the following:

*(i)* dates of service;

*(ii)* procedure/modifier codes;

*(iii)* number of units; and

*(iv)* charges; or

(B) return the bill to the sender, in accordance with subsection (c) of this section.

(3) The carrier may contact the sender to obtain the information necessary to make the bill complete, including the information specified in paragraph (2)(A)(i) - (iv) of this subsection. If the insurance carrier obtains the missing information and completes the bill, the insurance carrier shall document the name and telephone number of the person who supplied the information.

(b) An insurance carrier shall not return a medical bill except as provided in subsection (a) of this section. When returning a medical bill, the insurance carrier shall include a document identifying the reason(s) for returning the bill. The reason(s) related to the procedure or modifier code(s) shall identify the reason(s) by line item.

(c) The proper return of an incomplete medical bill in accordance with this section fulfills the insurance carrier's obligations with regard to the incomplete bill.

(d) An insurance carrier shall not combine bills submitted in separate envelopes as a single bill or separate single bills spanning several pages submitted in a single envelope.

*§133.210. Medical Documentation.*

(a) Medical documentation includes all medical reports and records, such as evaluation reports, narrative reports, assessment reports, progress report/notes, clinical notes, hospital records and diagnostic test results.

(b) When submitting a medical bill for reimbursement, the health care provider shall provide required documentation in legible form, unless the required documentation was previously provided to the insurance carrier or its agents.

(c) In addition to the documentation requirements of subsection (b) of this section, medical bills for the following services shall include the following supporting documentation:

(1) the two highest Evaluation and Management office visit codes for new and established patients: office visit notes/report satisfying the American Medical Association requirements for use of those CPT codes;

(2) surgical services rendered on the same date for which the total of the fees established in the current Division fee guideline exceeds $500: a copy of the operative report;

(3) return to work rehabilitation programs as defined in §134.202 of this title (relating to Medical Fee Guideline): a copy of progress notes and/or SOAP (subjective/objective assessment plan/procedure) notes, which substantiate the care given, and indicate progress, improvement, the date of the next treatment(s) and/or service(s), complications, and expected release dates;

(4) any supporting documentation for procedures which do not have an established Division maximum allowable reimbursement (MAR), to include an exact description of the health care provided; and

(5) for hospital services: an itemized statement of charges.

(d) Any request by the insurance carrier for additional documentation to process a medical bill shall:

(1) be in writing;

(2) be specific to the bill or the bill's related episode of care;

(3) describe with specificity the clinical and other information to be included in the response;

(4) be relevant and necessary for the resolution of the bill;

(5) be for information that is contained in or in the process of being incorporated into the injured employee's medical or billing record maintained by the health care provider;

(6) indicate the specific reason for which the insurance carrier is requesting the information; and

(7) include a copy of the medical bill for which the insurance carrier is requesting the additional documentation.

(e) It is the insurance carrier's obligation to furnish its agents with any documentation necessary for the resolution of a medical bill. The Division considers any medical billing information or documentation possessed by one entity to be simultaneously possessed by the other.

(f) Workers' compensation health care networks established under Insurance Code Chapter 1305 may decrease the documentation requirements of this section.

*§133.230. Insurance Carrier Audit of a Medical Bill.*

(a) An insurance carrier may perform an audit of a medical bill that has been submitted by a health care provider to the insurance carrier for reimbursement. The insurance carrier may not audit a medical bill upon which it has taken final action.

(b) If an insurance carrier decides to conduct an audit of a medical bill, the insurance carrier shall:

(1) provide notice to the health care provider no later than the 45th day after the date the insurance carrier received the complete medical bill. For onsite audits, provide notice in accordance with subsection (c) of this section;

(2) pay to the health care provider no later than the 45th day after receipt of the provider's medical bill, for the health care being audited:

(A) for a workers' compensation health care network established under Insurance Code Chapter 1305, 85 percent of the applicable contracted amount; or

(B) for services not provided under Insurance Code Chapter 1305, 85 percent of:

*(i)* the maximum allowable reimbursement amounts established under the applicable Division fee guidelines;

*(ii)* the contracted amount for services not addressed by Division fee guidelines; or

*(iii)* the fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) for services not addressed by clause (i) or (ii) of this subparagraph;

(3) make a determination regarding the relationship of the health care services provided for the compensable injury, the extent of the injury, and the medical necessity of the services provided; and

(4) complete the audit and pay, reduce, or deny in accordance with §133.240 of this chapter (relating to Medical Payments and Denials) no later than the 160th day after receipt of the complete medical bill.

(c) If the insurance carrier intends to perform an onsite audit, the notice shall include the following information for each medical bill that is subject to audit:

(1) employee's full name, address, and Social Security number;

(2) date of injury;

(3) date(s) of service for which the audit is being performed;

(4) insurance carrier's name and address;

(5) a proposed date and time for the audit, subject to mutual agreement; and

(6) name and telephone number of the person who will perform the onsite audit, has the authority to act on behalf of the insurance carrier, and shall personally appear for the onsite audit at the scheduled date and time.

(d) During the insurance carrier's onsite audit, the health care provider shall:

(1) make available to the insurance carrier: all notes, reports, test results, narratives, and other documentation the health care provider has relating to the billing(s) subject to audit; and

(2) designate one person with authority to: negotiate a resolution, serve as the liaison between the health care provider and the insurance carrier, and be available to the insurance carrier's representative.

(e) On the last day of the onsite audit, the health care provider's liaison and the insurance carrier's representative shall meet for an exit interview. The insurance carrier's representative shall present to the health care provider's liaison a list of unresolved issues related to the health care provided and the billed charges. The health care provider's liaison and the insurance carrier's representative shall discuss and attempt to resolve the issues.

*§133.240. Medical Payments and Denials.*

(a) An insurance carrier shall take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this chapter (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation.

(b) For health care provided to injured employees not subject to a workers' compensation health care network established under Insurance Code Chapter 1305, the insurance carrier shall not deny reimbursement for the following services based on medical necessity:

(1) health care preauthorized or voluntarily certified under Chapter 134 of this title (relating to Benefits--Guidelines for Medical Services, Charges, and Payments); and

(2) health care provided in accordance with Division-adopted treatment guidelines.

(c) The insurance carrier shall not change a billing code on a medical bill or reimburse health care at another billing code's value.

(d) The insurance carrier may request additional documentation, in accordance with §133.210 of this chapter (relating to Medical Documentation), not later than the 45th day after receipt of the medical bill to clarify the health care provider's charges.

(e) When the insurance carrier makes payment or denies payment on a medical bill, the insurance carrier shall send the explanation of benefits to the health care provider and injured employee in the form and manner prescribed by the Division. The explanation of bene-

fits shall indicate any interest amount paid, and the number of days on which interest was calculated.

(f) When the insurance carrier pays a health care provider for health care for which the Division has not established a maximum allowable reimbursement, the insurance carrier shall explain and document in the claim file the method it used to calculate the payment.

(g) An insurance carrier shall have filed, or shall concurrently file, the applicable notice required by Labor Code §409.021, and §124.2 and §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) if the insurance carrier reduces or denies payment for health care provided based solely on the insurance carrier's belief that:

(1) the injury is not compensable;

(2) the insurance carrier is not liable for the injury due to lack of insurance coverage; or

(3) the condition for which the health care was provided was not related to the compensable injury.

(h) If dissatisfied with the insurance carrier's final action, the health care provider or the injured employee may request reconsideration of the bill in accordance with §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills).

(i) If dissatisfied with the reconsideration outcome, the health care provider or the injured employee may request medical dispute resolution in accordance with §133.305 of this chapter (relating to Medical Dispute Resolution - General).

(j) Health care providers, injured employees, employers, attorneys, and other participants in the system shall not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except as provided in subsection (e) of this section and §133.305 of this chapter.

(k) All payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in accordance with §134.130 of this title (relating to Interest for Late Payment on Medical Bills and Refunds), without any action taken by the Division. The interest payment shall be paid at the same time as the medical bill payment.

(l) When an insurance carrier remits payment to a health care provider agent, the agent shall remit to the health care provider the full amount that the insurance carrier reimburses.

(m) When an insurance carrier remits payment to a pharmacy processing agent, the pharmacy's reimbursement shall be made in accordance with the terms of its contract with the pharmacy processing agent.

(n) An insurance carrier commits an administrative violation if the insurance carrier fails to pay, reduce, deny, or notify the health care provider of the intent to audit a medical bill in accordance with Labor Code §408.027 and Division rules.

*§133.250. Reconsideration for Payment of Medical Bills.*

(a) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill, the health care provider may request that the insurance carrier reconsider its action.

(b) The health care provider shall submit the request for reconsideration no later than eleven months from the date of service.

(c) A health care provider shall not submit a request for reconsideration until:

(1) the insurance carrier has taken final action on a medical bill; or

(2) the provider has not received an explanation of benefits within 50 days from submitting the medical bill to the insurance carrier.

(d) The request for reconsideration shall:

(1) reference the original bill and include the same billing codes, date(s) of service, and dollar amounts as the original bill;

(2) include a copy of the original explanation of benefits if received or documentation that a request for an explanation of benefits was submitted to the carrier;

(3) include any necessary and related documentation not submitted with the original medical bill to support the health care provider's position; and

(4) include a bill-specific, substantive explanation in accordance with §133.3 of this chapter (relating to Communication Between Health Care Providers and Insurance Carriers) that provides a rational basis to modify the previous denial or payment.

(e) An insurance carrier shall review all reconsideration requests for completeness in accordance with subsection (d) of this section and may return an incomplete reconsideration request, no later than seven days from the date of receipt. A health care provider may complete and resubmit its request to the insurance carrier.

(f) The insurance carrier shall take final action on a reconsideration request within 21 days of receiving the request for reconsideration. The insurance carrier shall provide an explanation of benefits for all items included in a reconsideration request in the form and format prescribed by the Division.

(g) A health care provider shall not resubmit a request for reconsideration earlier than 26 days from the date the carrier received the original request for reconsideration or after the insurance carrier has taken final action on the reconsideration request.

(h) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill after reconsideration, the health care provider may request medical dispute resolution in accordance with §133.305 of this chapter (relating to Medical Dispute Resolution - General).

*§133.260. Refunds.*

(a) An insurance carrier shall request a refund within 30 days of taking final action when it determines that inappropriate health care was previously reimbursed, or when an overpayment was made for health care provided.

(b) The insurance carrier shall submit the refund request to the health care provider in an explanation of benefits in the form and manner prescribed by the Division.

(c) A health care provider shall respond to a request for a refund from an insurance carrier by the 45th day after receipt of the request by:

(1) paying the requested amount; or

(2) submitting an appeal to the insurance carrier with a specific explanation of the reason the health care provider has failed to remit payment.

(d) The insurance carrier shall act on a health care provider's appeal within 45 days after the date on which the health care provider filed the appeal. The insurance carrier shall provide the health care provider with notice of its determination, either agreeing that no refund is due, or denying the appeal.

(e) If the insurance carrier denies the appeal, the health provider:

(1) shall remit the refund with any applicable interest within 45 days of receipt of notice of denied appeal; and

(2) may request medical dispute resolution in accordance with §133.305 of this chapter (relating to Medical Dispute Resolution - General).

(f) The health care provider shall submit a refund to the insurance carrier when the health care provider identifies an overpayment even though the insurance carrier has not submitted a refund request.

(g) When making a refund payment, the health care provider shall include: a copy of the insurance carrier's original request for refund; a copy of the original explanation of benefits containing the overpayment, if available; and a detailed explanation itemizing the refund. The explanation shall:

(1) identify the billing and rendering health care provider;

(2) identify the injured employee;

(3) identify the requesting insurance carrier;

(4) specify the total dollar amount being refunded;

(5) itemize the refund by dollar amount, line item and date of service; and

(6) the amount of interest paid, if any, and the number of days on which interest was calculated.

(h) All refunds requested by the insurance carrier and paid by a health care provider on or after the 60th day after the date the health care provider received the request for the refund shall include interest calculated in accordance with §134.130 of this title (relating to Interest for Late Payment on Medical Bills and Refunds).

*§133.270. Injured Employee Reimbursement for Health Care Paid.*

(a) An injured employee may request reimbursement from the insurance carrier when the injured employee has paid for health care provided for a compensable injury, unless the injured employee is liable for payment as specified in:

(1) Insurance Code §1305.451, or

(2) §134.504 of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

(b) The injured employee's request for reimbursement shall be legible and shall include documentation or evidence (such as itemized receipts) of the amount the injured employee paid the health care provider.

(c) The insurance carrier shall pay or deny the request for reimbursement within 45 days of the request. Reimbursement shall be made in accordance with the applicable Division fee guidelines or contract amount.

(d) The injured employee may seek reimbursement for any payment made above the applicable Division fee guideline or contract amount from the health care provider who received the overpayment.

(e) Within 45 days of a request, the health care provider shall reimburse the injured employee, the amount paid above the applicable Division fee guideline or contract amount.

(f) The injured employee is not required to request reconsideration under §133.250 of this chapter (relating to Reconsideration for Payment of Medical Bills) prior to requesting medical dispute resolution in accordance with §133.305 of this chapter (relating to Medical Dispute Resolution - General).

(g) The insurance carrier shall submit injured employee medical billing and payment data to the Division in accordance with §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Division).

*§133.280. Employer Reimbursement for Health Care Paid.*

(a) An employer may request reimbursement from the insurance carrier when the employer has paid for health care provided for a compensable injury, and provided notice of injury in compliance with Labor Code §409.005.

(b) The employer shall be reimbursed in accordance with the applicable Division fee guideline.

(c) The employer's request for reimbursement shall be legible and shall include:

(1) a copy of the health care provider's required billing form;

(2) any supporting documentation submitted by the health care provider as required in §133.210 of this chapter (relating to Medical Documentation); and

(3) documentation of the payment to the health care provider.

(d) The insurance carrier shall submit employer medical bill and payment data to the Division in accordance with §134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the Division).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600477
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

## CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

The Texas Department of Insurance, Division of Workers' Compensation proposes the repeal of §§134.1, 134.5, 134.6, 134.800, 134.801, and 134.803, concerning medical policies and provider billing procedures. The repeal of these sections is necessary for the Division to propose an extensive reorganization of Chapter 134, in conjunction with the revision of Chapter 133, to eliminate redundancies in existing rules and clarify medical billing, processing and reimbursement procedures. This reorganization includes the proposed repeal of current medical policy and provider billing rules in Chapter 134 and replacement with clarified and reorganized new rules that incorporate requirements of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005.

The Division simultaneously proposes new §§134.1, 134.100, 134.110, 134.120, and 134.130, published elsewhere in this issue of the *Texas Register*, concerning medical and miscellaneous reimbursement policies. The proposed new rules are necessary to implement, on a permanent basis, portions of HB 7. The proposed rules will permit compliance with statutory changes to the Labor Code §408.027, and also provide billing, processing and reimbursement direction for participants in a workers' compensation health care network established under Insurance Code Chapter 1305. This proposal also organizes the rules regarding medical billing, processing, and reimbursement to clarify and streamline the process. This will enable system participants to easily access specific portions of the medical billing and reimbursement rules, which are logically organized and follow the billing and reimbursement process. The proposed rules also minimize micro-management of the process by providing guidance and direction rather than specific, detailed instructions that required adherence. This will allow system participants more flexibility in developing their medical billing and bill review processes. In addition, the proposal relies on the statutorily required Medicare reimbursement structures, incorporates concepts from Texas Department of Insurance's managed care rules, and eliminates many of the duplicative Division instructions thus providing consistency and standardization for workers' compensation system benefits with other health care delivery systems.

Allen McDonald, Director, Medical Review, has determined that for each year of the first five years the proposed repeal will be in effect, there will be no fiscal impact to state and local governments as a result of the repeal. There will be no measurable effect on local employment or the local economy as a result of the proposed repeal.

Mr. McDonald has also determined that for each year of the first five years the proposed repeal is in effect the public benefits anticipated as a result of the repeal, in conjunction with adoption of proposed new Chapter 134 rules, will be a more efficient medical billing and reimbursement process. All system participants will benefit from the clarification and simplification of the proposed new Chapter 133 and 134 rules.

There are no anticipated costs to system participants as a result of the proposed repeal. There is no difference in the cost of compliance between a large and small business as a result of the proposed repeal. Based on the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 13, 2006 to Norma Garcia, General Counsel, MS 4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comments must be simultaneously submitted to Allen McDonald, MS 40, Director of Medical Review, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

## SUBCHAPTER A. MEDICAL POLICIES

### 28 TAC §§134.1, 134.5, 134.6

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Labor Code §§408.027, 402.00111, and 402.061. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following section is affected by this proposal: Labor Code §408.027

*§134.1. Use of the Fee Guidelines.*

*§134.5. Treating Doctor Attendance at Medical Examination under a Medical Examination Order.*

*§134.6. Travel Expenses Incurred by the Injured Employee.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600472
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

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## SUBCHAPTER I. PROVIDER BILLING PROCEDURES

### 28 TAC §§134.800, 134.801, 134.803

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance, Division of Workers' Compensation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Labor Code §§408.027, 402.00111, and 402.061. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this State. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following section is affected by this proposal: Labor Code §408.027

*§134.800. Required Billing Forms and Information.*

*§134.801. Submitting Medical Bills for Payment.*

*§134.803. Calculating Interest for Late Payment on Medical Bills and Refunds.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

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Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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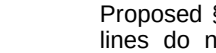
For further information, please call: (512) 804-4288



## CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

The Texas Department of Insurance, Division of Workers' Compensation proposes new §§134.1, 134.100, 134.110, 134.120, and 134.130, and amendments to §134.802, concerning medical billing reimbursements. These proposed sections are necessary to implement, on a permanent basis, portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The proposed sections will permit compliance with statutory changes to the Labor Code §408.027 and also provide medical reimbursement direction for participants in a workers' compensation health care network established under Insurance Code Chapter 1305. The primary focus of these proposed sections is to address the statutorily revised medical billing timeframe. These proposed rules do not apply to political subdivisions with contractual relationships under Labor Code §504.053(b)(2). If adopted, the proposed rules will replace the emergency rules adopted by the Commissioner of Workers' Compensation on November 3, 2005, and published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7621).

The proposed sections are designed to minimize micro-management of the system, utilize existing Medicare reimbursement structures, and incorporate concepts from the Texas Department of Insurance (TDI) managed care rules for consistency and standardization. The proposed rules also accommodate eBill initiatives by identifying forms and processes compatible in both paper and electronic processes. Additionally, the proposed sections involve an extensive reorganization of Chapter 134, in conjunction with the revision of Chapter 133, to eliminate redundancies in existing rules and clarify billing and reimbursement procedures. This initiative also includes the proposed repeal of several current billing, processing and reimbursement rules in Chapters 133 and 134, as published elsewhere in this issue of the *Texas Register*. The various proposals result in the consolidation of reimbursement methodologies and miscellaneous reimbursement amounts previously located in both Chapters 133 and 134 to Chapter 134.

This proposal also organizes the rules regarding medical billing, processing, and reimbursement to clarify and streamline the process. This will enable system participants to easily access specific portions of the medical billing rules, which are now logically organized to track the billing and reimbursement process.

The proposed rules also minimize micro-management of the process by reducing specific, detailed instructions. This will allow system participants more flexibility in developing their medical billing and bill review processes. In addition, by eliminating many of the duplicative Division instructions and relying on the statutorily required Medicare reimbursement structures, and incorporating concepts from TDI managed care rules, the proposed rules provide consistency and standardization of workers' compensation system benefits with other health care delivery systems. The proposed sections clarify medical reimbursement and other miscellaneous reimbursement. The proposed sections also address insurance carrier medical bill reporting to the Division.

Proposed §134.1 clarifies that the Division medical fee guidelines do not apply to medical services provided through a workers' compensation health care network established under Insurance Code Chapter 1305, except for examinations conducted pursuant to Labor Code §§408.004, 408.0041, and 408.151 which are reimbursed in accordance with §134.202. The proposed section also clarifies reimbursement for health care not provided through a workers' compensation health care network by specifically adding a reference to negotiated contracts and establishes the framework for fair and reasonable reimbursement.

Proposed §134.100 (existing §134.5) establishes the reimbursement criteria for the treating doctor attendance at a required medical examination. Proposed §134.110 (existing §134.6) establishes criteria to determine reimbursement of the injured employee for travel expenses. The distance at which reimbursement will occur is 30 miles rather than 20 miles in the existing rule to be consistent with the service area of workers' compensation networks since the proposed rules apply to networks also. Proposed §134.120 (existing §133.106) establishes reimbursement for medical documentation. The amount for reimbursement of medical narratives has been increased from the existing rule for the first two pages of a narrative report from $50 to $100 and each subsequent page from $20 to $40 per page. The amount of reimbursement for the narrative report has been stationary for several years and the amount in the existing rule did not seem to be a reasonable reimbursement for the time it takes a health care provider to prepare a narrative report. Proposed §134.130 (existing §134.803) establishes interest for late payment on medical bills and refunds. The proposed amendments to §134.802 make the language for insurance carrier medical bill reporting to the Division consistent with HB 7.

Allen McDonald, Director, Medical Review, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. McDonald has also determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the proposed sections will be a more efficient medical billing and reimbursement process. All system participants will benefit from the clarification and simplification of these rules. Additionally, the rules support the Division's initiatives to establish electronic medical billing as the standard in the Texas Workers' Compensation System.

Insurance carriers may realize a positive financial impact as a result of a clarifications and standardization of the fair and reasonable reimbursement concept. Additionally, insurance carri-

ers will benefit from the administrative consistency of processing network and non-network travel reimbursement using the same criteria for each.

Injured employees will benefit indirectly from an improved system as reimbursement processes reduce uncertainty and increase consistency in the reimbursement process for health care providers. In addition, the proposed sections establish that examinations conducted pursuant to Labor Code §§408.004, 408.0041, and 408.151 shall be reimbursed using the same standards for network or non-network claims. This benefits the injured employee by eliminating the potential perception of monetary influence on decisions relating to these examinations.

Health care providers benefit from an improved system as reimbursement processes reduce uncertainty and increase consistency in the reimbursement process for health care services. Health care providers also benefit through an improved billing and reimbursement system that aligns more closely with other health care systems, increasing standardization and reducing the administrative complexity of the system. An additional benefit will be realized by health care providers through increased reimbursement for preparation of requested narrative reports.

Insurance carriers or injured employees will incur an increase in costs associated with requesting narrative reports from health care providers. Proposed §134.120 increases the reimbursement amount for the first two pages of a narrative report from $50 to $100 and each subsequent page from $20 to $40 per page. The increase in costs incurred will be proportional to the number and size of narrative reports the insurance carrier or injured employee request.

Injured employees will also incur an increase in costs related to the change in the travel reimbursement from 20 miles to 30 miles. In an effort to maintain uniformity in the system, the Division decided to use 30 miles as the distance for travel reimbursement to be consistent with the service area of the networks and not have a different standard for non-networks and networks. The cost to the injured employee will vary depending on what type of transportation the employee uses. Based on estimated average fuel costs of $2.40 per gallon and a distance of 20 miles, if a personal vehicle is utilized the cost will depend on the mileage the vehicle gets. If the vehicle averages 20 or more miles per gallon, the estimated cost would be $2.40 or less and if it averages 10 miles per gallon, the estimated cost would be $4.80. Utilizing the maximum state mileage reimbursement rate for travel from January 1, 2006 to August 31, 2006, issued by the State Comptroller, reimbursement for the additional 20 miles would be $8.90.

There are no other anticipated costs for the proposed sections since it is a reorganization and standardization of existing rules using a similar process model. Any additional economic costs currently exist under existing rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed sections. There will be no difference in the cost of compliance between a large and small business as a result of the proposed sections. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses. Even if the proposed sections would have an adverse effect on small or micro-businesses, it is neither legal nor feasible to waive the provisions of the proposed sections for small or micro-businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 13, 2006, to Norma Garcia, General Counsel, MS 4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comments must be simultaneously submitted to Allen McDonald, Director of Medical Review, MS 40, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

## SUBCHAPTER A. MEDICAL REIMBURSEMENT POLICIES

### 28 TAC §134.1

The section is proposed under Labor Code §§401.023, 408.004, 408.0041, 408.021, 408.025, 408.027, 408.151, 413.007, 413.011, 413.019, 413.053, 402.00111, and 402.061. Section 401.023 provides for the computation of an interest rate used in the calculation of interest due on late payments. Section 408.004 provides for required medical examinations and reimbursement of both injured employee expenses incident to the examination and those of the doctor selected by the employee to attend. Section 408.0041 provides for designated doctor examinations and reimbursement of both injured employee expenses incident to the examination and those of the doctor selected by the employee to attend. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.025 requires the Commissioner to adopt requirements for reports and records required to be filed within the Workers' Compensation System. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 408.151 provides for required medical examinations and designated doctor examinations during supplemental income benefits. Section 413.007 requires the division to maintain a statewide database of medical charges, actual payments, and treatment protocols. Section 413.011 requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. Section 413.019 provides for the payment of interest on late payments by the carrier or provider after the 60th day a bill is received by the carrier, or after the 60th day the provider receives a refund request. Section 413.053 authorizes the Commissioner to establish standards for reporting and billing, governing both form and content. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following sections are affected by this proposal: Labor Code §§401.023, 408.004, 408.0041, 408.021, 408.025, 408.027, 408.151, 413.007, 413.011, 413.019, 413.053.

*§134.1. Medical Reimbursement.*

(a) Medical reimbursement for health care services provided to injured employees subject to a workers' compensation health care

network established under Insurance Code Chapter 1305 shall be made in accordance with the provisions of Insurance Code Chapter 1305, except as provided in subsection (b) of this section.

(b) Examinations conducted pursuant to Labor Code §§408.004, 408.0041, and 408.151 shall be reimbursed in accordance with §134.202 of this chapter (relating to Medical Fee Guideline).

(c) Medical reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with:

(1) the Division's fee guidelines;

(2) a negotiated contract; or

(3) subsection (d) of this section in the absence of an applicable fee guideline.

(d) Fair and reasonable reimbursement:

(1) is consistent with the criteria of Labor Code §413.011;

(2) ensures that similar procedures provided in similar circumstances receive similar reimbursement; and

(3) is based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available.

(e) The insurance carrier shall consistently apply fair and reasonable reimbursement amounts and maintain, in reproducible format, documentation of the insurance carrier's methodology(ies) establishing fair and reasonable reimbursement amounts. Upon request of the Division, an insurance carrier shall provide copies of such documentation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600479
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

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## SUBCHAPTER B. MISCELLANEOUS REIMBURSEMENT

### 28 TAC §§134.100, 134.110, 134.120, 134.130

The sections are proposed under Labor Code §§401.023, 408.004, 408.0041, 408.021, 408.025, 408.027, 408.151, 413.007, 413.011, 413.019, 413.053, 402.00111, and 402.061. Section 401.023 provides for the computation of an interest rate used in the calculation of interest due on late payments. Section 408.004 provides for required medical examinations and reimbursement of both injured employee expenses incident to the examination and those of the doctor selected by the employee to attend. Section 408.0041 provides for designated doctor examinations and reimbursement of both injured employee expenses incident to the examination and those of the doctor selected by the employee to attend. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.025 requires the Commissioner to adopt requirements for reports and records required to be filed within the Workers' Compensation System. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 408.151 provides for required medical examinations and designated doctor examinations during supplemental income benefits. Section 413.007 requires the division to maintain a statewide database of medical charges, actual payments, and treatment protocols. Section 413.011 requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. Section 413.019 provides for the payment of interest on late payments by the carrier or provider after the 60th day a bill is received by the carrier, or after the 60th day the provider receives a refund request. Section 413.053 authorizes the Commissioner to establish standards for reporting and billing, governing both form and content. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following sections are affected by this proposal: Labor Code §§401.023, 408.004, 408.0041, 408.021, 408.025, 408.027, 408.151, 413.007, 413.011, 413.019, 413.053.

*§134.100. Reimbursement of Treating Doctor for Attendance at Required Medical Examination.*

(a) When an injured employee's treating doctor is present at a required medical examination in accordance with §126.6 of this title (relating to Required Medical Examination), the insurance carrier shall reimburse the treating doctor for time as follows:

(1) at a rate of $100 an hour limited to four hours, unless the insurance carrier pre-approves extended time; and

(2) in quarter hour increments with any amount over 10 minutes considered an additional quarter hour.

(b) Reimbursement is limited to the time required to travel from the treating doctor's usual place of business to the place of the examination. In addition, it includes the duration of the examination and the time required to return from the examination location to the treating doctor's usual place of business. The travel shall be by the most direct route. This time does not include time spent for meals or other elective activities engaged in by the doctor.

(c) The treating doctor shall submit a request for reimbursement in accordance with §133.10 of this title (relating to Required Billing Forms/Formats).

(d) The injured employee's treating doctor shall be the only doctor permitted to attend and charge for the attendance at the examination.

(e) This section shall apply to all dates of travel on or after May 1, 2006.

*§134.110. Reimbursement of Injured Employee for Travel Expenses Incurred.*

(a) An injured employee may request reimbursement from the insurance carrier if the injured employee has incurred travel expenses when:

(1) medical treatment for the compensable injury is not reasonably available within 30 miles of the injured employee's residence; and

(2) the distance traveled to secure medical treatment is greater than 30 miles, one-way.

(b) The injured employee shall submit the request for reimbursement to the insurance carrier within one year of the date the injured employee incurred the expenses.

(c) The injured employee's request for reimbursement shall be in the form and manner required by the Division and shall include documentation or evidence (such as itemized receipts) of the amount of the expense the injured employee incurred.

(d) The insurance carrier shall reimburse the injured employee based on the travel rate for state employees on the date travel occurred, using mileage for the shortest reasonable route.

(1) Travel mileage is measured from the actual point of departure to the health care provider's location when the point of departure is:

(A) the employee's home; or

(B) the employee's place of employment.

(2) If the point of departure is not the employee's home or place of employment, then travel mileage shall be measured from the health care provider's location to the nearest of the following locations:

(A) the employee's home;

(B) the place of employment; or

(C) the actual point of departure.

(3) Total reimbursable mileage is based on round trip mileage.

(4) When an injured employee's travel expenses reasonably include food and lodging, the insurance carrier shall reimburse for the actual expenses not to exceed the current rate for state employees on the date the expense is incurred.

(e) The insurance carrier shall pay or deny the injured employee's request for reimbursement submitted in accordance with subsection (c) of this section within 45 days of receipt.

(f) If the insurance carrier does not reimburse the full amount requested, partial payment or denial of payment shall include a plain language explanation of the reason(s) for the reduction or denial. The insurance carrier shall inform the injured employee of the injured employee's right to request a benefit review conference in accordance with §141.1 of this title (relating to Requesting and Setting a Benefit Review Conference).

(g) This section shall apply to all dates of travel on or after May 1, 2006.

*§134.120. Reimbursement for Medical Documentation.*

(a) An insurance carrier is not required to reimburse initial medical documentation provided to the insurance carrier in accordance with §133.210 of this title (relating to Medical Documentation).

(b) An insurance carrier shall separately reimburse subsequent copies of medical documentation requested by the insurance carrier in accordance with §133.210 of this title.

(c) Upon request, the health care provider shall provide the injured employee, or the injured employee's representative, an initial copy of the medical documentation without charge. The requestor shall reimburse the health care provider for subsequent requests of the same medical documentation.

(d) If the injured employee, or the injured employee's representative, requests creation of medical documentation, such as a medical narrative, the requestor shall reimburse the health care provider for this additional information.

(e) The health care provider shall provide copies of any requested or required documentation to the Division at no charge.

(f) The reimbursements for medical documentation are:

(1) copies of medical documentation--$.50 per page;

(2) copies of hospital records--an initial fee of $5.00 plus $.50 per page for the first 20 pages, then $.30 per page for records over 20 pages;

(3) microfilm--$.50 per page;

(4) copies of X-ray films--$8.00 per film;

(5) narrative reports:

(A) one to two pages--$100;

(B) each page after two pages--$40 per page.

(g) Narrative reports are defined as original documents explaining the assessment, diagnosis, and plan of treatment for an injured employee written or orally transcribed and created at the written request of the insurance carrier or the Division. Narrative reports shall provide information beyond that required by prescribed medical reports and/or records. A narrative report should be single spaced on letter-size paper or equivalent electronic document format. Clinical or progress notes do not constitute a narrative report.

*§134.130. Interest for Late Payment on Medical Bills and Refunds.*

(a) Insurance carriers shall pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill, in accordance with §133.340 of this title (relating to Medical Payments and Denials).

(b) Health care providers shall pay interest to insurance carriers on requests for refunds paid later than the 60th day after the date the health care provider received the request for refund, in accordance with §133.260 of this title (relating to Refunds).

(c) The rate of interest to be paid shall be the rate calculated in accordance with Labor Code §401.023 and in effect on the date the payment was made.

(d) Interest shall be calculated as follows:

(1) multiply the rate of interest by the amount on which interest is due (to determine the annual amount of interest);

(2) divide the annual amount of interest by 365 (to determine the daily interest amount); then

(3) multiply the daily interest amount by the number of days of interest to which the recipient is entitled under subsection (a) or (b) of this section.

(e) The percentage of interest for each quarter may be obtained by accessing the Division's website, www.tdi.state.tx.us.

(f) This section shall apply to all dates of service on or after May 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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## SUBCHAPTER I. MEDICAL BILL REPORTING

### 28 TAC §134.802

The amendments are proposed under Labor Code §§401.023, 408.004, 408.0041, 408.021, 408.025, 408.027, 408.151, 413.007, 413.011, 413.019, 413.053, 402.00111, and 402.061. Section 401.023 provides for the computation of an interest rate used in the calculation of interest due on late payments. Section 408.004 provides for required medical examinations and reimbursement of both injured employee expenses incident to the examination and those of the doctor selected by the employee to attend. Section 408.0041 provides for designated doctor examinations and reimbursement of both injured employee expenses incident to the examination and those of the doctor selected by the employee to attend. Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Section 408.025 requires the Commissioner to adopt requirements for reports and records required to be filed within the Workers' Compensation System. Section 408.027 establishes the timeframe for a provider's claim submission, the timeframes for a carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 408.151 provides for required medical examinations and designated doctor examinations during supplemental income benefits. Section 413.007 requires the division to maintain a statewide database of medical charges, actual payments, and treatment protocols. Section 413.011 requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. Section 413.019 provides for the payment of interest on late payments by the carrier or provider after the 60th day a bill is received by the carrier, or after the 60th day the provider receives a refund request. Section 413.053 authorizes the Commissioner to establish standards for reporting and billing, governing both form and content. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Act.

The following sections are affected by this proposal: Labor Code §§401.023, 408.004, 408.0041, 408.021, 408.025, 408.027, 408.151, 413.007, 413.011, 413.019, 413.053.

*§134.802. Insurance Carrier Medical Electronic Data Interchange to the Division [~~Commission~~].*

(a) The insurance carrier shall submit medical bill and payment data to the Division [~~Commission~~] within 30 days after the insurance carrier makes payment, denies payment, or receives a refund of overpayment on a medical bill.

(b) Insurance carriers shall submit medical bill and payment data electronically in the form and format prescribed by the Division [~~Commission~~].

(c) The Division [~~Commission~~] shall prescribe the form, format, and content of the required medical bill and payment data submission.

(d) This section [~~rule~~] shall apply to all dates of service on or after July 15, 2000, for facility and professional medical services except pharmacy and dental services.

(e) This section [~~rule~~] shall apply to all dates of service on or after January 1, 2005, for pharmacy and dental services in addition to the already required facility and professional medical services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

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Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
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# CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

## SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

### 28 TAC §134.600

The Texas Department of Insurance, Division of Workers' Compensation proposes amendments to §134.600, concerning preauthorization, concurrent review, and voluntary certification of health care. The proposed amendments are necessary to implement portions of House Bill (HB) 7, enacted during the 79th Legislature, Regular Session, effective September 1, 2005. The proposed amendments are consistent with the adopted emergency rule amendments that permit expedited compliance with statutory changes to the Labor Code as a result of changes to §413.014 and new §408.0042. The changes affected by HB 7 include revisions to Labor Code §413.014(c) requiring health care providers to seek preauthorization and concurrent review of physical and occupational therapy, and creation of new Labor

Code §408.0042(d) which requires health care providers to seek preauthorization of treatments for any injury or diagnosis not accepted as compensable by the insurance carrier following a requested examination by the treating doctor. This proposed section does not apply to networks certified under Insurance Code Chapter 1305 or political subdivisions with contractual relationships under Labor Code §504.053(b)(2). If adopted, the proposed rule would replace the emergency rule published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7624).

The proposal reflects the Division's efforts as a result of stakeholder input to address the objectives regarding preauthorization requirements by removing services from the list of services that are not specific requirements of the Act, which may be in conflict with adopted treatment guidelines and/or historically not frequently requested and denied preauthorization. The proposal also addresses the incorporation of the provisions of Labor Code §408.028 regarding pharmaceutical closed formularies and §413.011 regarding treatment guidelines, protocols, and treatment plans.

The proposed amendments to subsection (a) include additions of new terminology used in the section and reorganization of terminology from other subsections for ease in reading.

Proposed subsection (b) has been added to resolve conflicts between Division-adopted treatment guidelines and the section. Treatments and services covered within the treatment guidelines require preauthorization or concurrent review if they are on the items listed in subsection (p) or (q).

Proposed subsection (g) addresses the need for preauthorization when an insurance carrier requests a treating doctor examination to define the compensable injury as set forth in Labor Code §408.0042. Proposed subsection (g)(1) requires the preauthorization request to be in the form of a treatment plan for a 60 day timeframe, and include a statement initialed by the injured employee that the injured employee may be responsible for charges related to the health care services provided if the injury/diagnosis is not work related. Proposed subsection (g)(3) requires the insurance carrier to indicate whether its denial is based on medical necessity and/or unrelated injury diagnosis. This proposed provision has been added to aid in the communication of parties and brings the denial of the preauthorization request to the forefront, which may aid in earlier resolution of disputes.

Proposed subsection (h) requires that requests for preauthorization for treating doctor examinations to define the compensable injury pursuant to Labor Code §408.0042 be subject to simultaneous review for both medical necessity and relatedness.

Proposed subsections (i), (j), (l), and (n) set forth requirements that were previously in subsection (f) and have been rephrased to reduce confusion and increase reader clarity.

Proposed subsection (k) adds that carriers are subject to an administrative violation for non-compliance requirements of subsections (i) and (j) and reinforces the importance of adhering to the section's stated timeframes for enforcement and regulatory purposes.

Proposed subsection (m)(4) has been added to require that the insurance carrier's denial include a plain language description of the complaint and appeal process if the preauthorization denial was based on the treating doctor to define compensable injury examination. This proposed provision aids injured employees in filing a dispute so that a resolution may be obtained earlier for all system participants. Proposed subsection (m)(5) has been added to decrease the Division's regulatory involvement in the independent review process. Amendments to this subsection closer correspond with existing Texas Department of Insurance independent review requirements by requiring the insurance carrier to notify the requestor of the availability of an independent review.

Proposed subsection (p) contains the list of non-emergency health care services requiring preauthorization. Proposed paragraphs (1) - (6) are statutorily required services to be preauthorized pursuant to Labor Code §413.014. Specifically, proposed paragraph (5) contains the new statutory provision requiring preauthorization of physical and occupational therapy services. These proposed amendments provide that preauthorization is not required for the first six physical or occupational therapy visits following the evaluation when such treatment is rendered within the first two weeks immediately following the date of injury or a surgical intervention previously preauthorized by the carrier. Therefore, these proposed initial physical and occupational therapy visits, which are exceptions to required preauthorization, are subject to retrospective review for medical necessity. The reason these proposed provisions have been included is to promote the timely initiation of rehabilitation services following injury or surgery. Postponement of medically necessary rehabilitative care can lead to delays in recovery, suboptimal stay-at-work and return-to-work outcomes, and additional claim costs. Proposed paragraph (7) retained psychological/psychotherapy services on the list because it is not adequately addressed by treatment guidelines. Proposed paragraphs (8) - (10) are health care services that previously required preauthorization and have been retained because they are health care services for which preauthorization has been frequently requested and denied, based on Division statistics. Proposed paragraph (11) has been added to the health care services needing preauthorization due to the requirement to adopt a closed formulary. Proposed paragraphs (12) and (13) have been added as treatments and services that will require preauthorization to allow the health care provider to seek approval of a range of services, which otherwise would either be individually preauthorized or subject to retrospective review. This blended approach is being utilized to reduce the administrative costs to both the health care provider and the insurance carrier, while increasing the surety of payment for preauthorized services. Many health care providers already use treatment planning in various health care systems and the implementation of treatment planning in workers' compensation should not be seen as an increased administrative burden. Proposed paragraph (14) corresponds with preauthorization for health care services accepted by the insurance carrier as a result of a treating doctor examination to define the compensable injury.

Proposed subsection (q) contains the list of health care services requiring concurrent review for an extension of previously approved services. Physical and occupational therapy services have been added as well as chronic pain management/interdisciplinary pain rehabilitation.

Throughout the section, the term Commission has been changed to either Division or Commissioner, as appropriate, and unnecessary language has been removed to increase the clarity of the section, reduce confusion, and address other statutory requirements of HB 7.

Allen McDonald, Director, Medical Review, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. McDonald has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be a more efficient preauthorization process. All system participants will benefit from added language requiring communication early in the claim process and by the simultaneous medical necessity and compensability review. Insurance carriers may realize a positive financial impact as a result of having less disputes regarding preauthorized services as a result of requiring additional communication regarding the liability of the health care. A simultaneous review of both medical necessity and compensability is likely to return the injured employee back to sustainable work due to the increase efficiency in the delivery of health care. Insurance carriers may realize a positive financial impact as the injured employee's period of lost time from work decreases as a result of a more efficient delivery of health care services. Health care providers will benefit from having more definitive information about the claim earlier in the process. Health care providers may also realize a positive financial impact by the simultaneous review for both medical necessity and compensability, which is likely to cause a decline in fee disputes. Health care providers will also benefit from an increased security of payment for delivered health care services. A simultaneous review of medical necessity and compensability brings the work-related disputes to the front of the preauthorization process. Injured employees will benefit by knowing earlier in the process the extent of their liabilities and from a more efficient, quicker delivery of health care, which aids in their return to sustainable, productive work.

Preauthorization of physical therapy and occupational therapy was required by HB 7 in order to reduce overutilization of these services. There are no additional costs anticipated associated with the implementation of this section as proposed. Insurance carriers will realize a positive financial impact associated with the prevention of unnecessary medical services, which may offset the costs of performing the increased level of utilization review functions required by statute. Subsequent cost savings is likely to occur with the establishment and operation of workers' compensation certified health care networks. It is anticipated that the ultimate successful implementation of health care networks and the adoption of treatment guidelines and treatment planning rules will result in increased savings. The incorporation of treatment planning into the preauthorization process will allow the health care provider to seek approval of a range of services, which otherwise would either be individually preauthorized or subject to retrospective review. This blended approach reduces the administrative costs to both the health care provider and the insurance carrier while increasing the surety of payment for preauthorized services. Many health care providers already use treatment planning in various health care systems, and the implementation of treatment planning in workers' compensation should not be an increased administrative burden.

After the adoption of the emergency rule, additional information was received from various parties regarding the number of sessions that should be allowed to be performed before preauthorization is required. The proposed rule increases the number of sessions from two to six, which will reduce the administrative burdens experienced for both insurance carriers and health care providers since the adoption of the emergency rule without significant impact to system costs. The increase of two to six visits within two weeks before physical and occupational services require preauthorization provides for more efficient delivery of health care services to the injured employee. Injured employees may also benefit from an increased ability to return to work. As a result of the anticipated positive return to work outcomes, insurance carriers may realize additional positive financial impacts through shortened loss time from an injured employee's workplace.

The proposed amendments to the section's language is likely to benefit all system participants by clarifying the preauthorization process and reducing errors due to varying interpretations of the section.

Insurance carriers may incur computer programming costs associated with adding statutory items and frequently requested items on to the list of health care services requiring preauthorization. The cost will vary depending on the complexity of the computer system that the carrier utilizes. According to statewide data collected by the Texas Workforce Commission from November 2003 through November 2005, the mean hourly wage rate for a computer programmer is $30.78. It is anticipated that an insurance carrier may need a computer programmer from one to four hours to make programming adjusts to reflect the health care services requiring preauthorization.

Any additional economic costs currently exist under existing rules or result from the enactment of HB 7 and are not a result of the adoption, enforcement, or administration of the proposed section. There will be no difference in the cost of compliance between a large and small business as a result of the proposed section. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro-businesses. Even if the proposed section would have an adverse effect on small or micro-businesses, it is neither legal nor feasible to waive the provisions of the proposed section for small or micro-businesses because the Labor Code requires equal application of these provisions to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on March 13, 2006, to Norma Garcia, General Counsel, MS 4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. An additional copy of the comments must be simultaneously submitted to Allen McDonald, MS 40, Director of Medical Review, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

The amendments are proposed under the Labor Code §§413.014, 408.0042, 402.00111 and 402.061. Section 413.014 requires health care providers to seek preauthorization and concurrent review of physical and occupational therapy. Section 408.0042(d) requires preauthorization of treatments for any injury or diagnosis not accepted as compensable by the insurance carrier following a requested examination by the treating doctor. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§413.014, 408.0042, 408.028, 408.0231, 413.011, and 413.031.

*§134.600. Preauthorization, Concurrent Review, and Voluntary Certification of Health Care.*

(a) The following words and terms when[,] used in this chapter [section] shall have the following meanings, unless the context clearly indicates otherwise:

(1) Ambulatory surgical services: surgical services provided in a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.[;]

(2) Concurrent review: a review of on-going health care listed in subsection (q) [(i)] of this section for an extension of treatment beyond previously approved health care listed in subsection (p) [(h)] of this section.[;]

(3) Diagnostic study: any test used to help establish or exclude the presence of disease/injury in symptomatic persons. The test may help determine the diagnosis, screen for specific disease/injury, guide the management of an established disease/injury, and formulate a prognosis.

(4) Division exempted program: a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited work conditioning or work hardening program that has requested and been granted an exemption by the Division from preauthorization and concurrent review requirements.

(5) [(3)] Final adjudication: the Commissioner [commission] has issued a final decision or order that is no longer subject to appeal by either party.[;]

(6) [(4)] Outpatient surgical services: surgical services provided in a freestanding surgical center or a hospital outpatient department to patients who do not require overnight hospital care.[;]

(7) [(5)] Preauthorization: prospective approval obtained from the insurance carrier (carrier) by the requestor or injured employee (employee) prior to providing the health care treatment or services (health care).[; and]

(8) [(6)] Requestor: the health care provider or designated representative, including office staff or a referral health care provider/health care facility that [who] requests preauthorization, concurrent review,or voluntary certification.[;]

(9) Work conditioning and work hardening: return to work rehabilitation programs as defined in this chapter.

(b) When the Division-adopted treatment guidelines conflict with this section, this section prevails.

(c) [(b)] The carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (p) [(h)] or (q) [(i)] of this section[,] only when the following situations occur:

(A) an emergency, as defined in Chapter 133 [§133.1] of this title (relating toGeneral Medical Provisions [Definitions]);

(B) preauthorization of any health care listed in subsection(p) [(h)] of this section that was approved prior to providing the health care;

(C) concurrent review of any health care listed in subsection (q) [(i)] of this section that was approved prior to providing the health care; or

(D) when ordered by the Commissioner [commission]; or

(2) per subsection(r) [(j)] of this section[,] when voluntary certification was requested and payment agreed upon prior to providing the health care[,] for any health care not listed in subsection(p) [(h)] of this section.

(d) [(c)] The carrier is not liable under subsection (c)(1)(B) or (C) [subparagraphs (b)(1)(B) or (C)] of this section if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

(e) [(d)] The carrier [or its agent, to include utilization review agent (carrier)] shall designate accessible direct telephone and facsimile numbers[,] and may designate an electronic transmission address for use by the requestor or employee to request preauthorization or concurrent review during normal business hours. The direct number shall be answered or the facsimile or electronic transmission address responded to by the carrier within the time limits established in subsection (i) [(f)] of this section.

(f) The requestor or employee shall request and obtain preauthorization from the carrier prior to providing or receiving health care listed in subsection (p) of this section. Concurrent review shall be requested prior to the conclusion of the specific number of treatments or period of time preauthorized and approval must be obtained prior to extending the health care listed in subsection (q) of this section. The request for preauthorization or concurrent review shall be sent to the carrier by telephone, facsimile, or electronic transmission and, include the:

(1) specific health care listed in subsection (p) or (q) of this section;

(2) number of specific health care treatments and the specific period of time requested to complete the treatments;

(3) information to substantiate the medical necessity of the health care requested;

(4) accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the carrier;

(5) name of the provider performing the health care; and

(6) facility name and estimated date of proposed health care.

(g) A health care provider may submit a request for health care to treat an injury or diagnosis that is not accepted by the carrier in accordance with Labor Code §408.0042.

(1) The request shall:

(A) be in the form of a treatment plan for a 60 day time frame; and

(B) include the following statement initialed by the injured employee: My health care provider has explained to me that I could be responsible for the charges related to these services (Estimated Charge $---) if the injury/diagnosis is not work-related.

(2) The requestor or employee may file an extent of injury dispute upon receipt of a request denied by the carrier due to unrelated injury/diagnosis.

(3) If denying the request, the carrier shall indicate whether the denial is based on medical necessity and/or unrelated injury/diagnosis.

(4) Requests denied due to unrelated injury/diagnosis may not proceed to medical dispute resolution.

(h) Requests submitted in accordance with subsection (g) of this section shall be reviewed by the carrier for both medical necessity and relatedness. Otherwise, the carrier shall approve or deny requests based solely upon the medical necessity of the health care required to treat the injury, regardless of:

(1) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(2) the carrier's liability for the injury; or

(3) the fact that the employee has reached maximum medical improvement.

(i) The carrier shall contact the requestor or employee by telephone, facsimile, or electronic transmission with the decision to approve or deny the request as follows:

(1) within three working days of receipt of a request for preauthorization; or

(2) within three working days of receipt of a request for concurrent review, except for health care listed in subsection (q)(1) of this section, which is due within one working day of the receipt of the request.

(j) The carrier shall send written notification of the approval or denial of the request within one working day of the decision to the:

(1) employee;

(2) employee's representative; and

(3) requestor, if not previously sent by facsimile or electronic transmission.

(k) The carrier's failure to comply with the requirements of subsection (i) or (j) of this section shall result in an administrative violation.

(l) The carrier shall not withdraw a preauthorization or concurrent review approval once issued. The approval shall include:

(1) the specific health care;

(2) the approved number of health care treatments and specific period of time to complete the treatments; and

(3) a notice of any unresolved dispute regarding the denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury.

(m) The carrier shall afford the requestor a reasonable opportunity to discuss the clinical basis for a denial with the appropriate doctor or health care provider performing the review prior to the issuance of a preauthorization or concurrent review denial. The denial shall include:

(1) the clinical basis for the denial;

(2) a description or the source of the screening criteria that were utilized as guidelines in making the denial;

(3) the principle reasons for the denial, if applicable;

(4) a plain language description of the complaint and appeal processes, if denial was based on Labor Code §408.0042, include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference); and

(5) after reconsideration of a denial, the notification of the availability of an independent review.

(n) The carrier shall not condition an approval or change any elements of the request as listed in subsection (f) of this section, unless the condition or change is mutually agreed to by the health care provider and carrier and is documented.

[~~(e) The requestor or employee shall request and obtain preauthorization from the carrier prior to providing or receiving health care listed in subsection (h) of this section. Concurrent review shall be requested prior to the conclusion of the specific number of treatments or period of time preauthorized and approval must be obtained prior to extending the health care listed in subsection (i) of this section. The request shall:~~]

[~~(1) be sent to the carrier by telephone, facsimile, or electronic transmission;~~]

[~~(2) include:~~]

[~~(A) the specific health care listed in subsections (h) or (i) of this section;~~]

[~~(B) the number of specific health care treatments and the specific period of time requested to complete the treatments;~~]

[~~(C) the medical information to substantiate the need for the health care recommended;~~]

[~~(D) the accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the carrier;~~]

[~~(E) the name of the provider performing the health care; and~~]

[~~(F) the facility name and estimated date of proposed health care.~~]

[~~(f) The carrier shall:~~]

[~~(1) approve or deny requests for preauthorization or concurrent review based solely upon the reasonable and necessary medical health care required to treat the injury, regardless of:~~]

[~~(A) unresolved issues of compensability, extent of or relatedness to the compensable injury;~~]

[~~(B) the carrier's liability for the injury; or~~]

[~~(C) the fact that the employee has reached maximum medical improvement;~~]

[~~(2) prior to the issuance of a denial, afford the requestor a reasonable opportunity to discuss the clinical basis for a denial with the appropriate doctor or health care provider performing the review;~~]

[~~(3) contact the requestor or employee by telephone, facsimile, or electronic transmission with the decision to approve or deny the request:~~]

[~~(A) within three working days of receipt of a request for preauthorization; or~~]

[~~(B) within three working days of receipt of a request for concurrent review, except for health care listed in subsection (i)(1) of this section, which is due within one working day of the receipt of the request;~~]

[~~(4) send written notification of the approval or denial of the request, within one working day of the decision to:~~]

[~~(A) the employee;~~]

[~~(B) the employee's representative; and~~]

[(C) the requestor, if not previously sent by facsimile or electronic transmission;]

[(5) include in an approval:]

[(A) the specific health care;]

[(B) number of requested health care treatments and the requested specific period of time to complete the treatments approved; and]

[(C) notice of any unresolved denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury;]

[(6) include in a denial:]

[(A) the description or source of screening criteria used, the principal reasons, and clinical basis for making the denial; and]

[(B) plain language notifying the employee of the right to timely request reconsideration of the health care denied under subsection (g) of this section;]

[(7) not withdraw an approval once issued; and]

[(8) not condition an approval or change any elements of the request as listed in subsection (e)(2), unless the condition or change is mutually agreed to by the health care provider and carrier and the agreement is documented.]

(o) [(g)] If the initial response is a denial of preauthorization, the requestor or employee may request reconsideration [of the denied health care]. If the initial response is a denial of [health care requiring] concurrent review, the requestor may request reconsideration [of the denied health care].

(1) The requestor or employee may[,] within 15 working days of receipt of a writteninitial denial[,] request the carrier to reconsider the denial and shall document the reconsideration request.

(2) The carrier shall respond to the request for reconsideration of the denial:

(A) within five working days of receipt of a request for reconsideration of denied preauthorization; or

(B) within three working days of receipt of a request for reconsideration of denied concurrent review, except for health care listed in subsection (q) [(i)](1) of this section, which is due within one working day of the receipt of the request;

(3) The requestor or employee may appeal the denial of a reconsideration request regarding medical necessity by filing a dispute in accordance with [Texas] Labor Code §413.031 and related Division rules [§§133.305, 133.307 and 133.308 of this title (relating to Medical Dispute Resolution; Medical Dispute Resolution of a Fee Dispute; and Medical Dispute Resolution by Independent Review Organization)].

(4) A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objectiveclinical documentation to support [that] a substantial change in the employee's medical condition [has occurred]. The carrier shall review the documentation and determine if a substantial change in the employee's medical condition has occurred.

(p) Non-emergency health care requiring preauthorization includes:

(1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay;

(2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section;

(3) spinal surgery;

(4) all non-exempted work hardening or non-exempted work conditioning programs;

(5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels:

(A) Level I code range for Physical Medicine and Rehabilitation, but limited to:

*(i)* Modalities, both supervised and constant attendance;

*(ii)* Therapeutic procedures, excluding work hardening and work conditioning;

*(iii)* Orthotics/Prosthetics Management;

*(iv)* Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code; and

(B) Level II temporary code(s) for physical and occupational therapy services provided in a home setting;

(C) except for the first six visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

*(i)* the date of injury, or

*(ii)* a surgical intervention previously preauthorized by the carrier;

(6) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care;

(7) all psychological testing and psychotherapy, repeat interviews, and biofeedback, except when any service is part of a preauthorized or Division exempted return-to-work rehabilitation program;

(8) unless otherwise specified in this subsection, a repeat individual diagnostic study:

(A) with a reimbursement rate of greater than $350 as established in the current Medical Fee Guideline, or

(B) without a reimbursement rate established in the current Medical Fee Guideline;

(9) all durable medical equipment (DME) in excess of $500 per item (either purchase or expected cumulative rental);

(10) chronic pain management/interdisciplinary pain rehabilitation;

(11) drugs not included in the Division's formulary;

(12) treatments and services that exceed or are not addressed by the Commissioner's adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the carrier;

(13) required treatment plans; and

(14) any treatment for an injury or diagnosis that is not accepted by the carrier pursuant to Labor Code §408.0042 and §126.14 of this title (relating to Treating Doctor Examination to Define the Compensable Injury).

(q) The health care requiring concurrent review for an extension for previously approved services includes:

(1) inpatient length of stay;

(2) all non-exempted work hardening or non-exempted work conditioning programs;

(3) physical and occupational therapy services as referenced in subsection (p)(5) of this section;

(4) investigational or experimental services or use of devices;

(5) chronic pain management/interdisciplinary pain rehabilitation; and

(6) required treatment plans.

(r) The requestor and carrier may voluntarily discuss health care that does not require preauthorization or concurrent review under subsections (p) and (q) of this section respectively.

(1) Denial of a request for voluntary certification is not subject to dispute resolution for prospective review of medical necessity.

(2) The carrier may certify health care requested. The carrier and requestor shall document the agreement. Health care provided as a result of the agreement is not subject to retrospective review of medical necessity.

(3) If there is no agreement between the carrier and requestor, health care provided is subject to retrospective review of medical necessity.

[(h) The non-emergency health care requiring preauthorization includes:]

[(1) inpatient hospital admissions including the principal scheduled procedure(s) and the length of stay;]

[(2) outpatient surgical or ambulatory surgical services, as defined in subsection (a) of this section;]

[(3) spinal surgery, as provided by Texas Labor Code §408.026;]

[(4) all psychological testing and psychotherapy, repeat interviews, and biofeedback; except when any service is part of a preauthorized or exempt rehabilitation program;]

[(5) all external and implantable bone growth stimulators;]

[(6) all chemonucleolysis;]

[(7) all myelograms, discograms, or surface electromyograms;]

[(8) unless otherwise specified, repeat individual diagnostic study, with a fee established in the current Medical Fee Guideline of greater than $350 or documentation of procedure (DOP). (Diagnostic study is defined as any test used to help establish or exclude the presence of disease/injury in symptomatic persons; the test can help determine the diagnosis, screen for specific diseases/injury, guide the management of an established disease/injury and help formulate a prognosis.);]

[(9) work hardening and work conditioning services provided in a facility that has not been approved for exemption by the commission. A comprehensive occupational rehabilitation program or a general occupational rehabilitation program constitutes work hardening or work conditioning, respectively, for purposes of this section. All work hardening or work conditioning programs initiated on or after January 1, 2004 and prior to March 15, 2004, are subject to preauthorization and concurrent review. (For commission exemption approval for programs initiated on or after March 15, 2004, facilities must submit documentation of current program accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF) to the commission. Commission exempted programs and non-exempted programs are subject to commission verification and audit, and upon request shall submit specified information in the form and manner prescribed by the commission.);]

[(10) rehabilitation programs to include:]

[(A) outpatient medical rehabilitation; and]

[(B) chronic pain management/interdisciplinary pain rehabilitation;]

[(11) all durable medical equipment (DME) in excess of $500 per item (either purchase or expected cumulative rental) and all transcutaneous electrical nerve stimulators (TENS) units;]

[(12) nursing home, convalescent, residential, and all home health care services and treatments;]

[(13) chemical dependency or weight loss programs; and]

[(14) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care.]

[(i) The health care requiring concurrent review for an extension for previously approved services includes:]

[(1) inpatient length of stay;]

[(2) work hardening or work conditioning services;]

[(3) investigational or experimental services or use of devices;]

[(4) rehabilitation programs;]

[(5) DME in excess of $500 per item and TENS usage;]

[(6) nursing home, convalescent, residential, and home health care services; and]

[(7) chemical dependency or weight loss programs.]

[(j) This subsection governs requests for voluntary certification of health care treatment and treatment plans, either prospectively or concurrently, that do not require preauthorization or concurrent review under subsections (h) and (i) of this section respectively.]

[(1) The requestor and carrier may voluntarily discuss health care, including pharmaceutical services, and/or treatment plans.]

[(2) The carrier may certify or agree to pay for health care requested under paragraph (1) of this subsection. The carrier and requestor should document the agreement.]

[(3) Carrier certification, or agreement to pay, subjects the carrier to liability in accordance with subsection (b)(2) of this section even if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.]

[(4) Denials of voluntary certification under this subsection are not subject to prospective necessity dispute resolution; however, health care for which voluntary certification was denied, is subject to retrospective necessity dispute resolution.]

(s) [(k)] An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims, by the Division [commission] in accordance with Labor Code §408.0231(b)(4) [of the Texas Labor Code] and other sections of this title.

(t) [~~(l)~~] The carrier shall maintain accurate records to reflect information regarding requests for preauthorization, or concurrent review approval/denial decisions, and appeals, if any. The carrier shall also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the Division [~~commission~~], the carrier shall submit such information in the form and manner prescribed by the Division [~~commission~~].

~~[(m) Requests for preauthorization and/or concurrent review shall be responded to in accordance with rules in effect at the time of submission of the request. Where any terms or portions of this section are determined by a court of competent jurisdiction to be invalid, the remaining terms and provisions of this section shall remain in effect to the extent possible. If a portion of this section is declared invalid in a final judgment that is not subject to appeal, or is suspended by order of the court which is given immediate effect, the rule as it existed prior to the effective date of this section shall remain in effect for all requests for preauthorization to the extent necessary.]~~

~~[(n) The effective date of this section is March 15, 2004. Requests for preauthorization submitted prior to March 15, 2004 shall be subject to the rule in effect at the time the request was submitted.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600470
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 804-4288

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# TITLE 30. ENVIRONMENTAL QUALITY

## PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

## SUBCHAPTER B. OUTDOOR BURNING

### 30 TAC §111.203, §111.209

The Texas Commission on Environmental Quality (commission) proposes amendments to §111.203 and §111.209.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

House Bill (HB) 39, 79th Legislature, 2005, amended Texas Health and Safety Code (THSC), §382.018, Outdoor Burning of Waste and Combustible Material, by subjecting it to Local Government Code, §352.082, Outdoor Burning of Household Refuse in Certain Residential Areas. Under Local Government Code, §352.082, a person commits a Class C misdemeanor if the person intentionally or knowingly burns household refuse outdoors on a lot that is located in a neighborhood or on a lot that is smaller than five acres. Local Government Code, §352.082, is applicable only to the unincorporated area of a county that is adjacent to a county with a population of 3.3 million or more, and in which a planned community is located that has 20,000 or more acres of land that was originally established under the Urban Growth and New Community Development Act of 1970 (42 United States Code, §§4501 *et seq*.) and that is subject to restrictive covenants containing ad valorem or annual variable budget-based assessments on real property. The proposed rules would prohibit the burning of household refuse in the area delineated by Local Government Code, §352.082.

Senate Bill (SB) 1710, 79th Legislature, 2005, also amended THSC, §382.018, by adding subsections (b) and (c), which require the commission to authorize by rule the burning of waste consisting of plant growth in areas that meet the national ambient air quality standards (NAAQS) and do not contain any part of a city that does not meet the NAAQS if the waste is burned on the property of origin and by the owner of the property or any other person authorized by the owner. The commission is prohibited from requiring prior commission approval of the burning, or from authorizing the burning, only when no practical alternative exists. Current rules make no distinction between attainment and nonattainment areas regarding outdoor disposal fires. The proposed rules would implement the authorization by rule required by THSC, §382.018.

SB 1710 also amended THSC, §382.018, by adding subsections (d) and (e), which prohibit the commission from controlling or prohibiting outdoor burning of waste consisting of plant growth at a site designated for burning of waste generated from specific residential properties located outside of a municipality and in a county with a population of less than 50,000, if supervised by a fire department employee acting in the scope of the person's employment. The current rules do not authorize the burning of waste at designated sites. The proposed rules would establish minimal compliance determination criteria to ensure that all activities meet the qualifications for burns at designated sites. The commission notes that only three counties, Chambers, Hardin, and Rockwall, are within designated nonattainment areas and have a population of less than 50,000. Burning of domestic waste, including plant growth, is already authorized in these counties for private residences when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction. To the commission's best available knowledge, no residential properties outside of municipalities in these counties are provided with domestic waste collection by the local governmental entity having jurisdiction. Therefore, the proposed rules would not cause an increase in plant growth burns in designated nonattainment areas.

SECTION BY SECTION DISCUSSION

Administrative and grammatical changes are proposed throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

The proposed amendment to §111.203, Definitions, would add the definition of "Neighborhood" and "Refuse" and renumber subsequent definitions to accommodate the proposed new definitions. The proposed new definitions are repeated from THSC, §343.002.

The proposed amendment to §111.203 would also update the name "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality."

The proposed amendment to §111.209, Exception for Disposal Fires, would prohibit the burning of household refuse outdoors in areas delineated in Local Government Code, §352.082, by adding new subsection (b). Local law enforcement will be the primary authority in the enforcement of Local Government Code, §352.082.

The proposed amendment to §111.209 would also authorize by rule, as required by THSC, §382.018(b), the burning of plant growth on the property on which it was generated and by the owner of the property, or any person authorized by the owner, in counties that are not designated as nonattainment and that do not contain any part of a city that is part of a designated nonattainment area, by adding proposed new subsection (a)(4)(B). THSC, §382.018(c), prohibits the commission from requiring prior commission approval for outdoor burning or considering practical alternatives when authorizing burning under this rule. To protect human health and safety and environmental receptors, proposed subsection (a)(4)(B) would be subjected to §111.219(3), (4), (6), and (7), relating to General Requirements for Allowable Outdoor Burning. The commission also notes that all responsible persons engaged in outdoor burning are subject to §111.221, relating to Responsibility for Consequences of Outdoor Burning.

The proposed amendment to §111.209 would also provide for the burning of waste plant growth generated from specific residential properties at designated sites located outside of municipalities and within counties with a population of less than 50,000, by adding proposed new subsection (a)(4)(C). Under certain conditions, the commission is prohibited from controlling or prohibiting burning under THSC, §382.018(d). To meet these conditions, the burn must be at a designated burn site, located outside of a municipality, and within a county with a population of less than 50,000. All material burned must consist of plant growth generated at specific residential properties for which the site is designated. The burn must be supervised by a fire department employee acting in the scope of the person's employment, who must notify the commission of each supervised burn. To determine if burns under proposed subsection (a)(4)(C) meet the conditions of THSC, §382.018(d), the proposed rule would require the owner of the site or the owner's authorized agent to post the designated site, maintain a description or list of specific residential properties for which the site is generated, ensure that all waste burned consists of plant growth generated from these properties, and to ensure that a qualified fire department employee supervises each burn at the site.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state government. Although not anticipated to be significant, local governments may experience fiscal implications as a result of administration or enforcement of the proposed rules.

The proposed rulemaking would implement the provisions of HB 39 and SB 1710. HB 39 altered provisions of the Local Government Code concerning the outdoor burning of domestic waste. SB 1710 altered provisions of THSC, §382.018, regarding the outdoor burning of plant wastes.

The proposed rules, in accordance with the requirements of HB 39, would prohibit the burning of domestic waste in residential areas that are in unincorporated areas of a county adjacent to a county with a population of 3.3 million or more and where there is a planned community of 20,000 acres or more. In these residential areas, domestic waste could not be burned in a neighborhood or on a lot that is less than five acres.

The proposed rules would also implement the requirements of SB 1710, which authorizes outdoor burning of plant material in qualifying attainment areas and for residences in qualifying counties if there is a designated burn site. In qualifying attainment areas, plant waste must be burned on the property where it was generated and the waste must be burned by the owner of the property or an authorized representative. The commission cannot require property owners to obtain prior approval of the burn or to consider using practical alternatives to burns. In qualifying counties, plant waste can be burned at designated sites in counties where the population is less than 50,000, where the site is located outside a municipality, where the site serves designated residential properties, and where the burn is supervised by a fire department employee.

Local law enforcement organizations in areas where the outdoor burning of household refuse is prohibited under the proposed rulemaking could see enforcement costs increase if more resources are required to investigate complaints or incidents. The proposed rules regarding outdoor burning of household refuse apply to one demographic area of the state. Since the potential number of future enforcement incidences is not known, enforcement costs cannot be accurately estimated.

The fire departments in the areas of the state where designated burns can take place have the choice of whether to supervise burns. The number of fire departments that would choose to supervise burns is not known at this time. Fire departments participating in outdoor burning at designated sites may decide to charge fees for supervising these types of burns. Since employee costs and the method each fire department may choose to supervise such burns can vary widely, the amount of costs recovered and revenue generated cannot be estimated. However, the fiscal implications, if any, of supervised burns is not anticipated to be significant.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater protection of air quality in one demographic area of the state where the outdoor burning of refuse will be prohibited. In attainment areas, there will be greater flexibility for the outdoor burning of plant wastes.

Individuals in areas of the state where outdoor burning of household refuse will be prohibited under the proposed rules may see disposal costs increase if alternatives for the disposal of such refuse do not currently exist. However, the cost of this waste disposal is not anticipated to be significant.

Individuals or other entities in attainment areas may see costs for disposing of plant waste decrease since the proposed rules allow for the burning of such wastes and do not require individuals or other entities to consider practical alternatives to outdoor burning of plant wastes. Owners of residential property where

outdoor burning of plant wastes must be burned at designated sites may see disposal costs increase if local fire departments collect fees to supervise these burns. The cost decrease or increase of outdoor burning of plant wastes depend on various factors and may vary. However, any cost decrease or increase is not anticipated to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses under the proposed rulemaking. Plant waste disposal costs for small or micro-businesses in certain attainment areas may decrease since the proposed rules do not require small or micro-businesses to consider practical alternatives to outdoor burning in these cases; however, the cost decrease is not anticipated to be significant.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule as defined in the Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The primary purpose of the proposed rules is to protect the environment through the regulation of the outdoor burning of waste and combustible material. The proposed rules will not have an adverse material impact because the proposed rules are limited to revisions to the prohibition on and exception for disposal fires. The proposed revisions would: 1) prohibit the burning of domestic waste in residential areas that are in unincorporated areas of a county adjacent to a county with a population of 3.3 million or more and where there is a planned community of 20,000 acres or more. In these residential areas, domestic waste cannot be burned in a neighborhood or on a lot that is less than five acres; 2) allow for the burning of waste consisting of plant growth in areas that meet the NAAQS and do not contain any part of a city that does not meet the NAAQS if the waste is burned on the property of origin and by the owner of the property or any other person authorized by the owner; and 3) allow for the outdoor burning of waste consisting of plant growth at a site designated for consolidated burning of waste generated from specific residential properties located outside of a municipality and in a county with a population of less than 50,000, if supervised at the time of the burning by a fire department employee acting in the scope of the person's employment.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a), where the proposed rules: 1) are specifically required by state law, namely THSC, §382.018; 2) do not exceed the express requirements of THSC, §382.018; 3) do not exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) are not an adoption of a rule solely under the general powers of the commission.

Based on this assessment, the proposed rulemaking does not constitute a major environmental rule and is not subject to the regulatory analysis provisions of Texas Government Code, 2001.0225. The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rules is to protect the environment through the regulation of the outdoor burning of waste.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally), nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed rules are limited to revisions to the prohibition on and exception for disposal fires. The proposed revisions would: 1) prohibit the burning of domestic waste in residential areas that are in unincorporated areas of a county adjacent to a county with a population of 3.3 million or more and where there is a planned community of 20,000 acres or more. In these residential areas, domestic waste cannot be burned in a neighborhood or on a lot that is less than five acres; 2) allow for the burning of waste consisting of plant growth in areas that meet the NAAQS and do not contain any part of a city that does not meet the NAAQS if the waste is burned on the property of origin and by the owner of the property or any other person authorized by the owner; and 3) allow for the outdoor burning of waste consisting of plant growth at a site designated for consolidated burning of waste generated from specific residential properties located outside of a municipality and in a county with a population of less than 50,000, if supervised at the time of the burning by a fire department employee acting in the scope of the person's employment.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies.

The CMP goals applicable to the proposed rules include: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP policy applicable to the proposed rules requires that commission rules under THSC, Chapter 382, governing emissions of air pollutants, shall comply with regulations in 40 Code of Federal Regulations, adopted in accordance with federal Clean Air Act, 42 United States Code, §§7401, *et seq*., to protect and enhance air quality in the coastal area so as to protect coastal natural resources areas and promote the public health, safety, and welfare.

Promulgation and enforcement of the rules will not violate or exceed any standards identified in the applicable CMP goals and policies. The proposed rules are consistent with these CMP goals and policies. The rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on Tuesday, March 7, 2006, at 10:00 a.m., at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle, Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-041-111-CE. Comments must be received by 5:00 p.m., Monday, March 13, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ronnie Kramer, Field Operations Division, at (512) 239-0194.

STATUTORY AUTHORITY

The amendments are proposed under THSC, §382.002, relating to Policy and Purpose, Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to administer the requirements of the TCAA; §382.012, which provides the commission the authority to develop a comprehensive plan for the state's air; §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA; §382.018, which authorizes the commission to control outdoor burning; and §382.085, which prohibits unauthorized air emissions; and Texas Water Code, §5.103 and §5.105, which authorizes the commission to adopt rules.

The proposed amendments implement THSC, §§382.002, 382.011, 382.017, and 382.018.

*§111.203. Definitions.*

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that [~~which~~] are defined by the TCAA, the following terms, when used in this chapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Landclearing operation--The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access, or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property clean-up activities, nor does it include burning following clearing for ecological restoration.

(3) Neighborhood--A platted subdivision or property contiguous to and within 300 feet of a platted subdivision.

(4) [~~(3)~~] Practical alternative--An economically, technologically, ecologically, and logistically viable option.

(5) [~~(4)~~] Prescribed burn--The controlled application of fire to naturally occurring [~~naturally-occurring~~] vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

(6) Refuse--Garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(7) [~~(5)~~] Structure containing sensitive receptor(s)--A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term "man-made structure" does not include such things as range fences, roads, bridges, hunting blinds, or facilities used solely for the storage of hay or other livestock feeds. The term "sensitive live vegetation" is defined as vegetation that [~~which~~] has potential to be damaged by smoke and heat, examples of which include, but are not limited to, [~~:~~] nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

(8) [~~(6)~~] Sunrise/Sunset--Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

(9) [~~(7)~~] Wildland--Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

*§111.209. Exception for Disposal Fires.*

(a) Except as provided in subsection (b) of this section, outdoor [~~Outdoor~~] burning shall be authorized for the following: [~~.~~]

(1) domestic [~~Domestic~~] waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. Provision of waste collection refers to collection at the premises where the waste is generated. The term "domestic waste" is defined in §101.1 of this title (relating to Definitions). Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Examples of wastes not considered domestic waste that [~~which~~] cannot be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire, and appliances; [~~.~~]

(2) diseased [~~Diseased~~] animal carcass burning when burning is the most effective means of controlling the spread of disease; [~~.~~]

(3) veterinarians [~~Veterinarians~~] in accordance with Texas Occupations Code, §801.361, Disposal of Animal Remains; [~~.~~]

(4) on-site [~~On-site~~] burning of trees, brush, and other plant growth:

(A) for right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning exists and when the materials are generated only from that property. Structures containing sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. For a single project entailing multiple days of burning, an initial notice delineating the scope of the burn is sufficient if the scope does not constitute circumvention of the rule for a continual burning situation. Commission [~~notification or~~] approval is not required; [~~.~~]

(B) in a county that is not part of a designated nonattainment area and that does not contain any part of a municipality that extends into a designated nonattainment area; and on the property on which it was generated and by the owner of the property or any other person authorized by the owner. Such burning shall be subject to the requirements of §111.219(3), (4), (6), and (7) of this title. Commission approval is not required; or

(C) at a site designated for consolidated burning of waste generated from specific residential properties. A designated site must be located outside of a municipality and within a county with a population of less than 50,000. The owner of the designated site or the owner's authorized agent shall:

*(i)* post at all entrances to the site a placard measuring a minimum of 48 inches in width and 24 inches in height and containing, at a minimum, the words "DESIGNATED BURN SITE - No burning of any material is allowed except for trees, brush, grass, leaves, branch trimmings, or other plant growth generated from specific residential properties for which this site is designated. All burning must be supervised by a fire department employee. For more information call {PHONE NUMBER OF OWNER OR AUTHORIZED AGENT}." The placard(s) must be clearly visible and legible at all times;

*(ii)* designate specific residential properties for consolidated burning at the designated site;

*(iii)* maintain a record of the designated residential properties. The record must contain the description of a platted subdivision and/or a list of each property address and the name of each property owner. The description must be made available to commission or local air pollution control agency staff within 48 hours, if requested;

*(iv)* ensure that all waste burned at the designated site consists of trees, brush, grass, leaves, branch trimmings, or other plant growth;

*(v)* ensure that all such waste was generated at specific residential properties for which the site is designated; and

*(vi)* ensure that all burning at the designated site is directly supervised by an employee of a fire department who is part of the fire protection personnel, as defined by Texas Government Code, §419.021, and is acting in the scope of the person's employment. The fire department employee shall notify the appropriate commission regional office with a telephone or electronic facsimile notice 24 hours in advance of any scheduled supervised burn. The commission shall provide the employee with information on practical alternatives to burning. Commission approval is not required;

(5) crop [~~Crop~~] residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of §111.219 of this title[~~,~~] and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of the intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order; and [~~.~~]

(6) brush [~~Brush~~], trees, and other plant growth causing a detrimental public health and safety condition [~~may be~~] burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns cannot be conducted at municipal solid waste landfills unless authorized under §111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of §111.219 of this title.

(b) No person may cause, suffer, allow, or permit the burning of household refuse on a lot that is smaller than five acres or located in a neighborhood and in an unincorporated area of a county:

(1) that is adjacent to a county with a population of 3.3 million or more; and

(2) in which a planned community is located that has 20,000 or more acres of land, that was originally established under the Urban Growth and New Community Development Act of 1970 (42 United States Code, §§4501 *et seq.*), and that is subject to restrictive covenants containing ad valorem or annual variable budget-based assessments on real property.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600452
Stephanie Bergeron Perdue
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 239-5017

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# CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

## 30 TAC §335.261

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §335.261.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

House Bill (HB) 2793, passed by the 79th Legislature, 2005, requires the commission to adopt rules for regulating a mercury-containing automobile convenience switch as a universal waste as defined under §335.261. Handlers of universal wastes are subject to less stringent standards for reporting, storing, transporting, and collecting these wastes.

The United States Environmental Protection Agency (EPA) published a final rule, effective August 5, 2005, that adds mercury-containing equipment (MCE) to the federal list of universal wastes regulated under the hazardous waste regulations of the Resource Conservation and Recovery Act (RCRA). The EPA concluded that regulating spent MCE, including convenience switches, as a universal waste would lead to better management of the mercury contained in this equipment and would facilitate compliance with hazardous waste requirements. The proposed rule would implement provisions of HB 2793 by adopting an existing federal rule and adding MCE waste to the existing list of universal wastes.

*Background on MCE*

MCE consists of devices, items, or articles that contain varying amounts of elemental mercury that is integral to their functions. MCE includes several types of instruments used throughout the electric utility industry, other industries, municipalities, and households. Some commonly recognized devices are thermostats, barometers, manometers, and convenience light switches in automobiles. EPA's definition does not include mercury waste that the process of manufacturing or treatment generates as a by-product.

MCE waste is a solid waste and likely to be a hazardous waste when disposed of or reclaimed due to the toxicity characteristic. (See definitions in the federal regulations in 40 Code of Federal Regulations (CFR) §261.2 and §261.3 and in TCEQ regulations in §335.1(62) and (131).) Some spent MCE contains a few grams of mercury, whereas larger articles, items, and devices can contain much more mercury. Many of these pieces of equipment would fail the toxicity characteristic leaching procedure (TCLP) level for mercury of 0.2 milligrams per liter and would therefore be a D009 characteristic hazardous waste. (See federal regulations in 40 CFR §261.24, Table 1, and TCEQ regulations in §335.29.)

A variety of industries generate spent MCE. Electric and gas utilities generate the greatest amount of this waste, but many other sectors, including medicine, farming, and automobile manufacturing, use MCE to regulate pressure and temperature, or to conduct electricity in switches or regulators. Generators of spent MCE, then, are from a wide range of sectors: utilities, manufacturers, commercial establishments, universities, hospitals, and households.

*Rationale for the Universal Waste Rule and its Expansion*

In 1995, EPA promulgated the universal waste rule to establish a streamlined hazardous waste management system for widely generated hazardous wastes as a way to encourage environmentally sound collection and proper management of the wastes. EPA included hazardous waste batteries, certain hazardous waste pesticides, mercury-containing thermostats, and hazardous waste lamps on the federal list of universal wastes. The TCEQ adopted an equivalent universal waste rule in 1997, with an amendment in 1999 to allow for paint and paint-related wastes to be managed as universal waste in Texas.

In 2005, the 79th Legislature passed HB 2793 requiring the TCEQ to adopt rules for regulating a convenience switch as a universal waste. The EPA rule adopted August 5, 2005, in allowing for MCE to be designated as universal waste, allows convenience switches to be designated as universal waste. The commission believes that adopting the EPA rule by reference will simplify storage, handling, recycling, and disposal of MCE. It will also help ensure that spent MCE will be sent to the appropriate destination facilities, which would manage it as a hazardous waste with all applicable Subtitle C requirements. Specifically, under the commission's proposed rule, rather than having to comply with the full RCRA Subtitle C regulations, handlers and transporters who generate or manage MCE designated as universal waste would be subject to the management standards under 40 CFR Part 273 and its state-equivalent, Chapter 335, Subchapter H, Division 5. Handlers include universal waste generators and collection facilities. The regulations distinguish between "large-quantity handlers of universal waste" (those who handle 5,000 kilograms or more total of universal waste at one time) and "small-quantity handlers of universal waste" (those who handle less than 5,000 kilograms or more total of universal waste at one time). The 5,000-kilogram accumulation criterion applies to the quantity of all universal wastes accumulated.

The proposed rule would incorporate streamlined standards for storage, labeling and marking, preparing MCE waste for shipment off site, employee training, response to releases, and notification. However, the proposed rule would not be likely to impose an additional burden on many who would fall within the expanded regulated community handling MCE. This is because the packaging and labeling standards the TCEQ proposes for spent MCE are already in place for used thermostats, a subset of MCE. Moreover, these streamlined standards would also encourage proper handling and recycling of the waste.

The proposed rule would also subject transporters of universal waste to less stringent requirements than the full, Subtitle C hazardous waste transportation regulations and TCEQ regulations in Chapter 335, Subchapter D. The primary difference between the universal waste transporter requirements and the full hazardous waste transportation requirements is that the transport of universal waste requires no manifest.

The commission maintains that the proposed universal waste requirements would be highly effective in mitigating risks posed by spent MCE. Specifically, the requirements for handlers to manage and transport ampules of mercury in a way that would prevent breakage, or to seal the MCE in its original housing and ship it sealed, would help ensure safe management and transport. In addition, the universal waste program requires proper training for employees on handling universal waste, responding to releases, and shipping in accordance with Department of Transportation regulations. These requirements would lower the risks posed during accumulation and transport.

The TCEQ expects that managing spent MCE as universal waste would increase the collection of this equipment. As a result, the proposed rule would increase the amount of mercury being diverted from the non-hazardous waste stream into the hazardous waste stream because it would allow Texas handlers, especially those that generate this waste sporadically and in small volumes, to send it to a central consolidation point. Before EPA's adopted rule expanding universal wastes to include MCE, an entity in Texas could not consolidate these materials unless it had a RCRA permit. Under the federal universal waste rule and the TCEQ's proposed universal waste rule, a handler of universal

waste could send the universal waste to another handler, who could consolidate it into a larger shipment.

Another benefit of the proposed rule is improved implementation and compliance with the state's hazardous waste regulatory program. The commission believes that the structure and requirements of the universal waste rule are compatible with the circumstances of handlers of spent MCE. Being able to handle MCE as universal waste would most likely improve compliance with the hazardous waste regulations. Because spent MCE is generated in small quantities in geographically dispersed operations, compliance with full Subtitle C requirements is difficult to achieve. Compliance with Subtitle C is particularly difficult for electric or gas utility operations that are located on customers' properties. In addition, handlers of spent MCE who are infrequent generators of hazardous waste and who might otherwise be unfamiliar with the more complex Subtitle C management structure, but who generate spent MCE, would be able to more easily send this waste for proper management. For example, under the TCEQ's proposed universal waste rule, a fire station, community center, or retail store could participate in an MCE collection program without having to get a RCRA permit, as full Subtitle C regulation would require. The TCEQ could encourage individual households and conditionally exempt small quantity generators to participate in such programs, which would divert MCE from the municipal waste stream. The consolidation of MCE at facilities, which would be made possible by the proposed universal waste rule, would significantly reduce the administrative and financial burden of collection and transportation of MCE. Therefore, adding spent MCE to the universal waste rule would improve compliance with the hazardous waste regulations. Improved compliance would be likely to benefit human health and the environment.

When managed improperly, mercury poses a threat to human health and the environment. The proposed addition of MCE waste to the list of universal wastes would help ensure that MCE waste ends up at a destination facility equipped to manage it properly. This proposed rule streamlines requirements only for generators and transporters of universal waste. The stringent regulation of "destination facilities" would remain the same. "Destination facilities" treat, store, dispose, or recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA permit for such activities. For example, destination facilities must comply with the substantive requirements of the land disposal restriction (LDR) provisions of the Hazardous and Solid Waste Amendments of 1984 and the TCEQ's LDR provisions in §335.431. These include a prohibition on accumulating prohibited wastes directly on the ground; a requirement to treat waste to meet treatment standards before land placement; a prohibition on dilution; and a prohibition on accumulation, except for purposes of accumulating quantities sufficient for proper recovery, treatment, or disposal. The commission contends that compliance with the substantive requirements of the LDR program is necessary to minimize risks from mismanaging spent MCE. The commission expects that allowing spent MCE to be universal waste would make collection and transportation of this waste to an appropriate facility easier and, therefore, would reduce the amount of mercury released into the environment.

In summary, the commission maintains that expanding the universal waste list to include spent MCE is a sound way to address the environmental hazards of spent MCE. Handlers would be operating within a simple, streamlined management system with some limited oversight. The universal waste rules, as proposed, would address the environmental concerns surrounding the management of MCE wastes, while at the same time putting into place a structure that would allow for, and encourage, the increased collection of spent MCE.

SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

*Section 335.261, Control Requirements*

The proposed amendment to §335.261(a) would update a reference to the *Federal Register*.

The proposed amendment to §335.261(b)(2) would change the reference, "Texas Natural Resource Commission," to "Texas Commission on Environmental Quality."

The proposed amendment to §335.261(b)(12) would change the meaning of a reference to 40 CFR "§273.9" from equating solely to the TCEQ's definition of "thermostats" as contained in §335.261(b)(16)(E) to encompassing 40 CFR §273.9 in addition to the definition of "thermostats."

The proposed amendment to §335.261(b)(16)(F)(iii) would add "mercury-containing equipment" to the list of hazardous wastes subject to the universal waste requirements of the section.

In §335.261(b), existing paragraph (21) is proposed to be deleted since it was created solely to clarify references which no longer exist. Section 335.261(b)(22) - (29) is proposed to be renumbered as §335.261(b)(21) - (28). Section 335.261(b)(29) is proposed to be added to change a new reference in 40 CFR §273.33(c)(4)(i), "40 CFR Part 261, subpart C," to "Chapter 335, Subchapter R of this title (relating to Waste Classification)." In 335.261(b) existing paragraph (30) is proposed to be deleted since it was created solely to clarify references which no longer exist. Section 335.261(b)(30) is proposed to be added to change a new reference in 40 CFR §273.33(c)(4)(ii), "40 CFR parts 260 through 272," to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency or any other units of state or local government. State agencies, units of local government, or facilities that manage or generate MCE waste may realize cost savings due to an anticipated reduction in costs to manage and transport this type of waste.

The proposed rule would implement provisions of HB 2793 by adopting an existing federal rule and adding MCE waste to the existing list of universal wastes. The proposed rule would also provide management standards for the new universal waste. Entities that managed, generated, or transported MCE as universal waste would not be subject to certain hazardous waste regulations. Rules for "destination facilities," which treat, store, dispose, or recycle universal wastes, would remain the same.

MCE consists of devices, items, or articles that contain varying amounts of elemental mercury that is integral to their func-

tions. MCE includes several types of instruments that are used throughout the electric utility industry and other industries, municipalities, and households, and includes devices such as thermostats, barometers, manometers, and mercury switches such as convenience light switches in automobiles. This does not include mercury waste that is generated as a by-product through the process of manufacturing or treatment.

Affected facilities would include all generators and other facilities that routinely or periodically manage MCE, and could include as many as 30,000 facilities. Units of state or local government do not typically generate or manage MCE in large quantities and are therefore not expected to be affected by the proposed rule. However, if they do, they can expect to experience the same cost savings described for businesses and individuals under the PUBLIC BENEFITS AND COSTS section of this preamble. No additional costs are expected for the TCEQ to implement the proposed rule, and no significant changes in enforcement or compliance activities are expected.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be increased protection of the public health and environment through increased collection and proper disposal of spent MCE.

The TCEQ expects the proposed rule to result in cost savings for businesses or individuals that generate or routinely or periodically manage MCE. The proposed rule could affect as many as 30,000 facilities.

The TCEQ intends for the addition of MCE to the list of universal wastes to help ensure that the mercury from MCE ends up at a destination facility equipped to manage it properly. The proposed rule streamlines requirements only for generators and transporters of universal waste. The stringent regulation of destination facilities would remain the same. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste TSDFs and must receive a RCRA permit for such activities.

Under the proposed rule, generators of MCE waste would not have to manifest a shipment of waste or use a registered hazardous waste transporter, and could ship mercury to another handler or aggregation point rather than directly to a disposal or recycling facility. The realized cost savings could result in an estimated 25% - 50% reduction of typical transportation costs of $5.00 per hour and in some cases could reduce disposal rates of $100 per ton as waste would be allowed to accumulate for a longer period of time.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. The TCEQ expects the proposed rule to result in a simpler, streamlined management system for MCE waste. If there are any small or micro-businesses that generate or routinely or periodically manage MCE, they would be likely to experience the same cost savings as larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule would not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Although this rule is proposed to protect the environment and reduce the risk to human health from environmental exposure, it would not be a major environmental rule because it would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule would not adversely affect in a material way the previously mentioned aspects of the state because the rule would provide for streamlined waste-management standards for certain MCE, which in turn would provide an overall benefit to the economy, certain sectors of the economy, productivity, competition, jobs, the environment, affected sectors of the state, and the public health and safety of the state. More simply stated, the proposed amendments would revise the commission's hazardous waste rules in a manner which could benefit the economy while enhancing the protection of the environment and public health and safety, as per the following explanation. The overall benefit from streamlining waste management standards for certain MCE would be that the new standards would reduce the regulatory burden on persons generating or collecting these wastes. The streamlined waste-management standards for certain MCE would provide a benefit to the economy, certain sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule would be a benefit by facilitating environmentally sound collection and increasing the proper recycling and processing of MCE. There would be no adverse effect because the rules are designed to maintain protection of the environment, the public health, and the public safety of the state and all sectors of the state. In other words, the TCEQ anticipates that the proposed standards would reduce regulatory requirements while facilitating an alternative for the collection of MCE and increasing the proper recycling and processing of these wastes.

Furthermore, the proposed rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rule would not exceed a standard set by federal law because the purpose of this rulemaking is to adopt federal rules by reference, with no additional state standards. Requirements in the proposed rule are in accordance with the corresponding federal regulations, and they do not exceed an express requirement of state law as there is no express requirement in state law concerning universal wastes. The proposed rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule fits the framework of the corresponding federal universal waste regulations. See 40 CFR §271.21, relating to procedures, for revision of state programs and 40 CFR Part 273, relating to standards for universal waste management. The rulemaking proposes a rule under specific state law (i.e., Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024). Finally, this rulemaking is not being proposed on an emergency basis either to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

In accordance with Texas Government Code, §2007.043, the commission has prepared a takings impact assessment for the proposed rule. The following is a summary of that assessment. The specific purpose of the proposed rule is to provide an alternative for the collection of MCE, facilitating environmentally sound collection and increasing the proper recycling and processing of MCE. The proposed rule would substantially advance this purpose by adopting environmentally protective streamlined standards relating to universal wastes meeting the definition of MCE. Promulgation and enforcement of the proposed rule would not affect private property because the rule provides an alternative set of management standards for MCE in lieu of other, more stringent hazardous waste regulations, representing a streamlined approach. The proposed standards are not more stringent than existing standards. In addition, the reduction of regulatory requirements would be taken only at the initiative of certain persons managing MCE. For these reasons, the proposed rule would not be a burden to private real property and would not constitute a taking under Texas Government Code, Chapter 2007. The proposed rule would not affect a landowner's rights in private real property.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. In accordance with 31 TAC §505.22, the commission has prepared a consistency determination for the proposal and has found that it is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). CMP policies focus on construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq*. Promulgation and enforcement of this rule would be consistent with the applicable CMP goals and policies because the rule would facilitate the environmentally sound collection of MCE wastes; increase the proper recycling and processing of MCE wastes; and enable programs developed to reduce the quantity of these wastes going to municipal solid waste landfills or incinerators. The rule would also help assure that the wastes go to appropriate processing and recycling facilities under full RCRA Subtitle C hazardous waste regulatory controls. Thus, the rule would serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Adding MCE to the list of universal wastes will not impact new solid waste facilities and areal expansions of existing solid waste facilities. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections explaining the proposed rule, concerning explanation of proposed rule, final regulatory impact assessment, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Holly Vierk, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711- 3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-072- 335-AS. Comments must be received no later than 5:00 p.m., March 13, 2006. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact G. Michael Lindner, Small Business and Environmental Assistance, at (512) 239-3045.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Solid Waste Disposal Act.

The proposed amendment implements THSC, Chapter 375, which relates to convenience switches from motor vehicles to be classified as universal waste.

*§335.261. Universal Waste Rule.*

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under [~~Title~~] 30 Texas Administrative Code. Except as provided in subsection (b) of this section, [~~Title~~] 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended and adopted in the *Federal Register* through August 5, 2005 (70 FR 45508) [~~July 6, 1999 at 64 FedReg 36466~~].

(b) [~~Title~~] 40 CFR Part 273, except §273.1, is adopted subject to the following changes.[~~:~~]

(1) (No change.)

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~]," "the agency," or "the commission" consistent with the organization of the commission as set out in [~~the~~] Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or §273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

(3) - (11) (No change.)

(12) In 40 CFR §273.4(a), the reference to "§273.9"as it relates to the definition of "mercury-containing equipment" is amended to include the commission definition of "thermostats" as contained in [~~changed to "~~] §335.261(b)(16)(E) of this title (relating to Universal Waste Rule)[~~"~~] and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(13) - (14) (No change.)

(15) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)1 [~~§261.5~~]" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and to "§335.402(5) of this title (relating to the Definition of Hazardous Household Waste)" and

the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(16) In 40 CFR §273.9, the following definitions are changed to the meanings described in this paragraph.[:]

(A) Destination facility--A ["~~Destination Facility" means a~~] facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.[;]

(B) Generator--Any ["~~Generator" means any~~] person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.[;]

(C) Large quantity handler of universal waste--A ["~~Large Quantity Handler of Universal Waste" means a~~] universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.[;]

(D) Small quantity handler of universal waste--A ["~~Small Quantity Handler of Universal Waste" means a~~] universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.[;]

(E) Thermostat--A ["~~Thermostat" means a~~] temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section.[~~; and~~]

(F) Universal waste--Any ["~~Universal Waste" means any~~] of the following hazardous wastes that are subject to the universal waste requirements of this section:

*(i)* batteries, as described in 40 CFR §273.2;

*(ii)* pesticides, as described in 40 CFR §273.3;

*(iii)* mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;

*(iv)* paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

*(v)* lamps, as described in 40 CFR §273.5.

(17) - (20) (No change.)

[~~(21) In 40 CFR §273.13(c)(3)(ii), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."~~]

(21) [~~(22)~~] In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(22) [~~(23)~~] In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(23) [~~(24)~~] In 40 CFR §273.20(a), the reference to "40 CFR §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(24) [~~(25)~~] In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(25) [~~(26)~~] In 40 CFR §273.30, the reference to "§273.9" is changed to "§335.261(b)(16)(C) of this title (relating to Universal Waste Rule)."

(26) [~~(27)~~] 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(27) [~~(28)~~] In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(28) [~~(29)~~] In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(29) In 40 CFR §273.33(c)(4)(i), the reference, "40 CFR part 261, subpart C," is changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(30) In 40 CFR §273.33(c)(3)(ii), the reference, "40 CFR parts 260 through 272," is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

[~~(30) In 40 CFR §273.33(c)(3)(ii), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."~~]

(31) - (37) (No change.)

(38) In 40 CFR §273.60(a), the reference to "§273.9" is changed to "§335.261(b)(16)(A) of this title (relating to Universal Waste Rule)" and the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "[~~Title~~] 30 Texas Administrative Code (relating to Environmental Quality)."

(39) - (40) (No change.)

(41) In 40 CFR §273.80(b), the reference to "40 CFR §260.20(b)" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)."

(42) (No change.)

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G [~~subpart G of 40 CFR part 273~~] as adopted by reference in this section.

(1) - (3) (No change.)

(d) (No change.)

(e) Crushing lamps is permissible only in a crushing system for which the following control conditions are met:

(1) an [~~An~~] exposure limit of no more than 0.05 milligrams of mercury per cubic meter is demonstrated through sampling and analysis using Occupational Safety and Health Administration (OSHA) Method ID-140 or National Institute for Occupational Safety and Health Method Number [~~No.~~] 6009, based on an eight-hour [~~eight-hour~~] time-weighted average of samples taken at the breathing zone height near the crushing system operating at the maximum expected level of activity;

(2) compliance [~~Compliance~~] with the notification requirements of §106.262 of this title (relating to Facilities (Emission and Distance Limitations) (Previously SE 118)) is demonstrated;

(3) documentation [~~Documentation~~] of the demonstrations under paragraphs (1) and (2) of this subsection is provided in a written report to the executive director; and

(4) the [~~The~~] executive director approves the crushing system in writing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600451
Stephanie Bergeron Perdue
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 239-0177

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

## PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

### CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission proposes amendments to Title 40, Part 2, the rules of the Department of Assistive and Rehabilitative Services (DARS), by repealing two separate sections in Chapter 101 for the Division for Blind Services and the Division for Rehabilitation Services concerning protest procedures, and replacing with a single rule pertaining to protest procedures applicable to the entire agency. The rules being repealed are §101.3839, concerning Protest Procedures and §101.4951, concerning Availability of Protest Procedures. The rule replacing these two rules is 40 TAC §104.301, in a new Chapter 104 of Title 40, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, and within Chapter 104 in a new Subchapter J, Protest Procedures. The repeals and replacement are being proposed to consolidate separate rules concerning protest procedures from two of the legacy agencies of DARS, the Texas Commission for the Blind, and Texas Rehabilitation Commission, into one rule concerning protest procedures applicable to the entire Department of Assistive and Rehabilitative Services.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeals will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeals will be in effect, the public benefit anticipated as a result of adopting the proposed repeals will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed for repeal. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeals will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

### SUBCHAPTER F. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO BLIND SERVICES

### DIVISION 5. PURCHASE OF GOODS AND SERVICES BY THE COMMISSION

**40 TAC §101.3839**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

*§101.3839. Protest Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600410
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 424-4050

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## SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES
## DIVISION 10. PROTEST PROCEDURES

**40 TAC §101.4951**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

*§101.4951. Availability of Protest Procedures.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2006.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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## CHAPTER 104. PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES
## SUBCHAPTER J. PROTEST PROCEDURES

**40 TAC §104.301**

The Texas Health and Human Services Commission proposes amendments to Title 40, Part 2, the rules of the Department of Assistive and Rehabilitative Services (DARS). DARS proposes new Chapter 104, Purchase of Goods and Services by the Department of Assistive and Rehabilitative Services, new Subchapter J, Protest Procedures, §104.301, Availability of Protest Procedures. DARS is also repealing two separate sections in Chapter 101 for the Division for Blind Services and the Division for Rehabilitation Services concerning protest procedures, and replacing with this single rule pertaining to protest procedures applicable to the entire agency. The rules being repealed are §101.3839, concerning Protest Procedures and §101.4951, concerning Availability of Protest Procedures. The new rule replaces these two rules. The repeals and replacement are being proposed to consolidate separate rules concerning protest procedures from two of the legacy agencies of DARS, the Texas Commission for the Blind, and Texas Rehabilitation Commission, into one rule concerning protest procedures applicable to the entire Department of Assistive and Rehabilitative Services.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the new rule will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the new rule will be in effect, the public benefit anticipated as a result of adopting the proposed new rule will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the new rule as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed new rule will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

The new rule is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

No other statute, article, or code is affected by this proposal.

*§104.301. Availability of Protest Procedures.*

(a) A potential recipient of a purchase award may protest a purchase award under the following circumstances:

(1) the purchase award was made under a competitive procurement method and the potential recipient submitted a bid or proposal that was not selected for the award; or

(2) the purchase award was a sole source or emergency procurement.

(b) The protest must be limited to matters relating to the protester's qualifications, the suitability of the goods or services offered by the protester or alleged irregularities in the procurement process.

(c) Protesters must submit written protests to the Department of Assistive and Rehabilitative Services (DARS) designated purchaser.

(d) In order for the protest to be evaluated on its merits, it must state:

(1) the protester's company name:

(2) specific action the protester is requesting be reconsidered;

(3) how the decision, action, or inaction by DARS violated published DARS policy, or state or federal laws and regulations regarding procurement;

(4) the protester's claim with specific supporting information such as references to pertinent parts of the original request for proposal, offer, bid, or the award documents;

(5) an explanation of the facts under disagreement; and

(6) the subsequent action the protester is requesting.

(e) The written protest must be

(1) signed by the protester or the protester's authorized representative and

(2) delivered by hand, certified mail return receipt requested, facsimile or other verifiable delivery service.

(f) DARS must receive the protest no later than seven calendar days after DARS' notice of decision to execute a purchase award.

(g) Failure to comply with any of the requirements in subsections (a) - (f) of this section will result in dismissal of the protest.

(h) The DARS Commissioner or designee will review the protest and issue a final determination regarding the protest. The Commissioner or designee may, at his or her sole discretion, request supplemental oral or written information from the protester or DARS staff if the information is necessary to evaluate the protest.

(i) DARS limits the review of the protest to a desk review of the materials supplied by the protester and the DARS staff that made the award decision.

(j) DARS sends the protester a written notice of the final determination within 30 days of receiving the written protest.

(k) DARS will not execute a purchase award for a purchase that is the subject of a protest filed in accordance with this section until DARS provides the protester with a written disposition of the protest. DARS may execute a purchase award when there is a pending protest if there is a bona fide emergency or when state or federal laws require a purchase to be awarded by a particular date.

(l) DARS decision on the protest is the final administrative action taken by DARS.

(m) This section does not grant any additional standing or right for an unsuccessful or prospective bidder to protest the award of a contract than otherwise exists in law.

(n) The right to protest non-selection for a purchase award does not apply to:

(1) the award of grants or subcontracts;

(2) goods or services purchased pursuant to the Interagency Cooperation Act, Chapter 771, Government Code, or Interlocal Cooperation Act, Chapter 791, Government Code;

(3) the lease, purchase, or lease-purchase of real property;

(4) interstate or international agreements executed in accordance with applicable law; or

(5) goods or services purchased under contracts or processes administered by any other state agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 5. FINANCE

### SUBCHAPTER E. PASS-THROUGH FARES AND TOLLS

**43 TAC §§5.51 - 5.59**

The Texas Department of Transportation (department) proposes amendments to §§5.51-5.59, concerning pass-through fares and tolls.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 2702, 79th Legislature, Regular Session, 2005, amended Transportation Code, §222.104, which governs agreements providing for pass-through tolls. Transportation Code, §222.104, requires changes to the rules to address the new statutory provisions allowing pass-through toll payments made by a public or private entity to the department and addresses additional subjects that can be included in an agreement providing for pass-through tolls. House Bill 2702 also added Transportation Code, §91.075, to allow the payment of pass-through fares on railway projects.

In addition, the department has now entered into several pass-through agreements under its current rules. Practical experience with these agreements has suggested ways in which the rules may be improved, so amendments are desirable to reflect that experience.

Section 5.51 is amended to include the new statutory language adding design, development, and financing as subjects suitable for a pass-through agreement. Section 5.51 is also amended to reference new Transportation Code, §222.104(c), which allows the department to receive a pass-through toll payment from a public or private entity. In addition, §5.51 is amended to reference new Transportation Code, §91.075(b), which allows pass-through fares on railway projects.

Section 5.52, concerning Definitions, is revised to add new definitions, delete definitions that are no longer necessary, and amend existing language. Paragraph (3) is amended to generalize the definition of department estimate so it will apply equally whether the department is paying or receiving pass-through tolls or fares.

For the same reason, paragraph (4) is amended to delete the definition of developer. Throughout the amended rules, the term developer is replaced by the term public or private entity.

New paragraph (6) is added to clarify that references to a highway include facilities necessary or convenient to the highway's construction.

New paragraph (8) is added to define the term pass-through agreement. The use of this term allows general references that will address both pass-through tolls and pass-through fares.

New paragraph (9) is added to define the term pass-through fare. The definition establishes that the term includes both passenger and freight rail and encompasses fares, surcharges, and user fees. Otherwise, the definition tracks the statutory language.

New paragraph (10) is amended so the definition of pass-through toll will more closely track the statutory language.

New paragraph (11) is added to define the phrase public or private entity, which is used throughout the rules to identify the entity with which the department may enter a pass-through agreement. This phrase replaces the term developer, which is used in the current rules, and is no longer appropriate because the law now allows the department to be the entity that develops a project.

New paragraph (12) is added to define railway so that it includes both passenger and freight rail and any facility in connection with a railway. This definition is essential to achieving the purpose of House Bill 2702 in allowing pass-through fares on any railway project.

Section 5.53(a), paragraph (1) is amended to require submission of a project location map with the public or private entity's proposal. Experience has shown that a project location map is extremely useful to the department in evaluating proposals.

Section 5.53(a), paragraph (5) is amended to clarify that experience in developing highway projects is only relevant if the pass-through agreement is for a highway project. Section 5.53(a), new paragraph (6) is added to impose a corresponding requirement for a statement of experience with regard to a pass-through agreement for a railway project. Subsequent paragraphs are renumbered.

Section 5.53(a), renumbered paragraph (7) is amended to clarify that information on development experience is unnecessary if the proposer will not be the one developing the project.

New paragraph (8) is added to address the corresponding situation in which the project will be developed by the department and the proposer will be making payments; the proposer must then provide information sufficient to show the proposer's ability to make the promised payments.

Section 5.53(a), paragraph (10) is amended to clarify that information on tolling is only necessary and relevant if the project will be for a highway.

Section 5.53(a), paragraph (11) is amended to clarify that information about the proposer's intention to enter a comprehensive development agreement is only necessary and relevant if the project will be for a highway.

Section 5.53(c) is amended to distinguish between highway and railway projects. For highway projects, the relevant citation for comprehensive development agreements is 43 TAC Chapter 27, while the corresponding citation for comprehensive development agreements for railway projects is 43 TAC Chapter 7.

Section 5.54 is amended to improve the grammatical construction. In addition, the amendments clarify that the initial approval by the Texas Transportation Commission (commission) permits the executive director to negotiate financial terms of a pass-through agreement, but that the detailed agreement itself will be negotiated after final commission approval of the financial terms. The amendments to paragraphs (3), (7), (8), and (9), clarify when certain requirements are only relevant to highway projects and impose corresponding requirements for railway projects. Paragraph (10) is amended to require additional information about the proposer's financial capability when the department will be constructing a project in reliance on future pass-through payments from the proposer.

Section 5.55(c) is amended to recognize that some of the listed factors will not be relevant to all pass-through agreements and to add the financial capability of the proposer as one of the criteria to be considered in evaluating proposals.

Section 5.55(g) is amended to recognize that the department cannot know in advance whether negotiations will be successful.

Section 5.56(a) is amended to reflect that at the time of commission approval, the department and the proposer will have negotiated the financial terms of the agreement, but may not have reached agreement on every word of a contract. Final commission authorization will be based on various criteria, including the new criterion that the project will serve the public interest and not merely a private interest. This criterion is added to ensure that the public interest is always paramount, particularly when a private entity is the proposer.

Section 5.56, new subsection (b), is added to list the required terms of any pass-through agreement. These terms combine in one place various terms that were previously implicit in several rules or were located in former §5.58(e). Experience with the pass-through mechanism has indicated that it is possible and desirable to combine the financial terms and project development terms in a single legal document. The list of matters that must be addressed in a pass-through agreement also includes items that have been shown through experience to be useful, such as a map of the project, a project schedule, and an estimated project budget.

Section 5.57, new subsection (a), is added to provide a method for calculating pass-through fares for railway projects. In concept, the methodology is similar to and runs parallel to the methodology used to establish pass-through tolls and considered in more detail in connection with new subsection (b). Subsection (a)(2)(B) allows pass-through fares to be calculated on any reasonable basis, including number, type, and class of passengers; type of freight; tonnage of freight; number or type of cars; mileage traveled; or characteristics of track. This flexibility is essential to allow pass-through fares to be tailored to the particular circumstances of a given railway.

New subsection (b)(1) of §5.57 is amended to clarify the standards to be considered by the commission in establishing the level of pass-through tolls. This includes rewording to improve the structure and clarity of the standards. One standard is added to ensure that the commission considers any benefit from the more rapid construction of a project. Amendments to this paragraph also clarify that the commission will not approve a level of pass-through tolls that exceed the department's cost estimate except by an amount equal to the savings realized through earlier construction of the project. Finally, the amended paragraph establishes that the commission will not compensate a public or private entity for its financing costs. As a whole, the amendments to new subsection (b)(1) establish necessary parameters that are designed to encourage the proper use of pass-through tolls while curbing demands that could result in excessive expenditures from the state highway fund.

Section 5.57(b)(2) is amended to improve the clarity of its original meaning by improving the grammatical structure. Paragraph (2), subparagraph (B) is rewritten to generalize the types of pass-through toll that will be allowed and to add whether the highway is tolled as a possible basis for varying pass-through toll payments. Paragraph (3) is rewritten to clarify the existing procedure with regard to overruns and underruns and to add a corresponding provision governing overruns and underruns when a project will be developed by the department. The provision governing overruns and underruns when a project will be developed

by the department places the risk of overruns and underruns on the public or private entity unless the commission directs otherwise. Paragraph (3), subparagraph (B) rewrites the provision governing traffic volume to clarify the existing procedure.

Section 5.58(a) is amended to permit department, rather than commission, approval of environmental review. This allows projects to proceed expeditiously after receiving the commission's final approval of financial terms. New subsection (b) is added to establish procedures for right of way acquisition and the adjustment of utilities. In general, a public or private entity is required to follow the same procedures as would apply to the department. For right of way acquisition, alternative procedures may be approved if it would be sufficient to meet legal requirements.

Section 5.58, new subsection (c), is amended to make explicit that the standards in the former rule are intended for application to highway projects under the former rule and to establish design criteria for railway projects. The design criteria for railway projects are comparable in scope and nature to the preexisting design criteria for highway projects. Former subsection (c) is deleted because the specific provisions previously considered for a separate project development agreement will now be handled in a single pass-through toll agreement. This provides for a single definitive legal document and thus reduces the department's legal risk, and it also reflects the department's successful experience to date in negotiating pass-through agreements that are complete and comprehensive.

Section 5.59 is amended to clarify the distinction between the standards applicable to highways and those applicable to railways. New subsection (d) is added to establish maintenance standards for railways. The railway maintenance standards are comparable in scope and nature to the preexisting maintenance standards for highways.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

Mr. Bass has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Bass has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be enhanced public understanding of the use of pass-through agreements and increased efficiency in the use of pass-through agreements to facilitate needed highway and railway improvements. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the amendments may be submitted to James Bass, Chief Financial Officer, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on March 13, 2006.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §222.104, which authorizes the department to enter agreements for pass-through tolls, and Transportation Code, §91.075, which authorizes the department to enter agreements for pass-through fares.

CROSS REFERENCE TO STATUTE

Transportation Code, §91.075, and §222.104.

*§5.51. Purpose.*

Transportation Code, §222.104(b) authorizes the Texas Department of Transportation to enter into an agreement with a public or private entity that provides for the payment of pass-through tolls to the public or private entity as reimbursement for the design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. Transportation Code, §222.104(c) authorizes the department to enter into an agreement with a private entity that provides for the payment of pass-through tolls to the department as reimbursement for the department's design, development, financing, construction, maintenance, or operation of a toll or non-toll facility on the state highway system by the public or private entity. Transportation Code, §91.075(b) authorizes the department to enter into an agreement with a public or private entity that provides for the payment of pass-through fares to the public or private entity as reimbursement for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a passenger railway facility or a freight railway facility by the entity. This subchapter prescribes the policies and procedures governing the department's implementation of these statutory provisions [~~Transportation Code, §222.104(b)~~].

*§5.52. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Department estimate--An estimate of what it would cost the department to perform [~~complete~~] the work proposed by the public or private entity, whether the work is proposed to be performed by the department or whether it is proposed to be performed by the public or private entity [~~developer~~]. The estimate is developed or updated by the department after receipt of a public or private entity's [~~developer's~~] request and prior to the time the department executes an agreement with the public or private entity [~~developer~~].

[~~(4) Developer--The public or private entity that enters into a pass-through toll agreement with the department under this subchapter for the construction, maintenance, or operation of a state highway.~~]

(4) [~~(5)~~] Environmental Permits, Issues, and Commitments (EPIC)--Any permit, issue, coordination, commitment, or mitigation obtained to satisfy social, economic, or environmental impacts of a project, including[~~, but not limited to,~~] sole source aquifer coordination, wetland permits, stormwater permits, traffic noise abatement, threatened or endangered species coordination, archeological permits, and any mitigation or other commitment associated with any of those issues.

(5) [~~(6)~~] Executive director--The executive director of the department or the executive director's designee not below district engineer, division director, or office director.

(6) Highway--Includes any facility convenient or necessary to the operation of a highway.

(7) Operation--Includes maintenance.

(8) Pass-through agreement--A pass-through toll agreement or a pass-through agreement entered under the terms of this subchapter by the department and a public or private entity.

(9) Pass-through fare--A dollar amount, including a surcharge or user fee for freight shipments, that is tied to a measure of actual usage of a railway and is used under this subchapter as a means of calculating payments made by one entity to another to provide reimbursement for some or all of the costs of acquiring, designing, developing, financing, constructing, relocating, maintaining, or operating a passenger or freight railway.

(10) [~~(8)~~] Pass-through toll--A dollar amount that is tied to a measure of actual usage of a highway and is used under this subchapter as a means of calculating payments made by one entity to another to provide reimbursement for some or all of the costs of designing, developing, financing, constructing, maintaining, or operating a highway on the state highway system [~~per vehicle fee or a per vehicle-mile fee that is determined by the number of vehicles using a highway~~].

(11) Public or private entity--Any entity authorized by law to enter into a pass-through agreement with the department under this subchapter for the acquisition, design, development, financing, construction, relocation, maintenance, or operation of a highway or railway.

(12) Railway--Includes both passenger and freight railways and any facility convenient or necessary to the operation of a railway.

*§5.53. Proposal.*

(a) A public or private [~~governmental~~] entity [~~authorized to finance, construct, maintain, or operate a state highway or a private entity~~] may submit in writing to the department a proposal for a project[~~,~~] or a series of projects[~~,~~] to be developed under a pass-through [~~toll~~] agreement. The proposal must include:

(1) a project location map showing proposed alignments and description of the project, including the project limits, connections with other transportation facilities, and any [~~a description of the~~] services to be provided [~~by the developer~~];

(2) a statement of the benefits anticipated to result from completion of the project;

(3) a description of the local public support for the project and any local public opposition;

(4) a proposed project development and implementation schedule;

(5) a description of the entity's experience in developing highway projects, if the proposer is a public entity and if the proposal is for the development of a highway project by that entity;

(6) a description of the entity's experience in developing railway projects, if the proposer is a public entity and if the proposal is for the development of a railway project by that entity;

(7) [~~(6)~~] complete information concerning the experience, expertise, technical competence, and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants, including the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants, and the capability of the proposer to develop the proposed projects, if the proposer is a private entity and if the proposal is for the development of a project by that entity;

(8) complete information sufficient to show the capability of the proposer to make all projected future payments, if the proposal is for the development of a project by the department;

(9) [~~(7)~~] if available, a proposed pass-through [~~toll~~] payment schedule;

(10) [~~(8)~~] for a highway project, a statement indicating whether the proposer intends for the project to be tolled and, if the proposer intends for a tolled project to be first opened to traffic as a non-tolled highway, the approximate date on which the highway will begin to be tolled; and

(11) [~~(9)~~] a statement indicating whether the proposer intends to enter into a comprehensive development agreement, if the proposer is a private entity and if the proposal is for the development of a project by that entity.

(b) If requested, and unless prohibited by law, the department will release to the public a proposal submitted under this section.

(c) The private entity and the department may agree to develop a project under a comprehensive development agreement if authorized by other law. For a highway project that is developed by the proposer, notwithstanding [~~Notwithstanding~~] any other provision of this subchapter, Chapter 27, Subchapter A, of this title (relating to Comprehensive Development Agreements [~~Policy, Rules, and Procedures for Private Involvement in Department Turnpike Projects~~]), applies to the solicitation, advertisement, negotiation, and execution of a comprehensive development agreement. For a railway project that is developed by the proposer, notwithstanding any other provision of this subchapter, Chapter 7, Subchapter B, of this title (relating to Contracts) applies to the solicitation, advertisement negotiation, and execution of a comprehensive development agreement.

*§5.54. Commission Approval To [~~to~~] Negotiate.*

The commission may authorize the executive director to negotiate the financial terms of a potential pass-through [~~an~~] agreement under this subchapter or, if the proposer is a private entity, authorize the department to solicit competitive proposals under §5.55 of this subchapter, after considering [~~the~~]:

(1) financial benefits to the state;

(2) local public support for the project;

(3) for a highway project, whether the project is in the department's Unified Transportation Program;

(4) the extent to which the project will relieve congestion on the state highway system;

(5) potential benefits to regional air quality that may be derived from the project;

(6) the compatibility of the proposed project with existing and planned transportation facilities;

(7) the entity's experience in developing highway projects, if the proposer is a public entity and if the proposal is for the development of a highway project by that entity; [~~and~~]

(8) the entity's experience in developing railway projects, if the proposer is a public entity and if the proposal is for the development of a railway project by that entity;

(9) [~~(8)~~] the qualifications of the proposer to accomplish the proposed work, if the proposer is a private entity and if the proposal is for the development of a project by that entity; and

(10) the financial capability of the proposer to make all projected pass-through payments, if the proposal is for the development of a project by the department.

*§5.55. Proposals from Private Entities.*

(a) If the commission approves the further evaluation of a proposal of a private entity under §5.54 of this subchapter, the department will publish notice of that decision and provide an opportunity for the submission of competing proposals.

(b) The department will publish a notice in the *Texas Register* and in one or more newspapers of general circulation. The notice will state that the department has received a proposal under this subchapter, that it intends to evaluate the proposal, that it may negotiate a pass-through [~~toll~~] agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing proposals that the department receives in accordance with this subchapter within 45 days of the initial publication of the notice in the *Texas Register*, or such additional time as authorized by the commission. In determining whether to authorize additional time for submission of competing proposals, the commission will consider the complexity of the proposal.

(c) The notice will summarize the proposed project and identify its proposed location. The notice will also specify the general criteria that will be used to evaluate all proposals and the relative weight given to the criteria. Specific evaluation criteria will be set forth in the request for proposals. The criteria will, at a minimum, include:

(1) the factors listed in §5.54 of this subchapter, to the extent applicable;

(2) the proposer's qualifications, [~~and~~] technical competence, and financial capability; and

(3) an analysis of the proposer's project implementation schedule.

(d) A proposal submitted in response to a notice must contain the information required by §5.53 of this subchapter.

(e) The original proposer may submit a revised proposal in response to a notice.

(f) Upon expiration of the 45-day period, or such additional time as authorized by the commission, the department will evaluate the proposal of the original proposer and any properly submitted competing proposals, utilizing the evaluation criteria set forth in the request for proposals.

(g) The department will rank all proposals after the evaluation described in subsection (f) of this section, and may select the private entity whose proposal provides the best value to the department. The department will attempt to negotiate a pass-through [~~toll~~] agreement with that proposer.

(h) If an agreement satisfactory to the department cannot be negotiated with the proposer, the department will formally end negotiations with that proposer. The department may reject all proposals or proceed to the next most highly ranked proposal and attempt to negotiate an agreement with that party.

*§5.56. Final Approval.*

(a) Authorization to negotiate final agreement. The executive director will submit to the commission a summary of the final financial terms of a proposed [~~successfully negotiated~~] pass-through [~~toll~~] agreement. The final financial terms may consist of specific payment terms and schedules or may consist of a range of acceptable parameters. The commission may authorize the executive director to negotiate and execute a final [~~the~~] agreement only if it finds that:

(1) the project serves the public interest and not merely a private interest;

(2) the proposed pass-through agreement is in the best interest of the state;

(3) the project is compatible with existing and planned transportation facilities; and

(4) the project furthers state, regional, and local transportation plans, programs, policies, and goals. [~~the agreement is in the best interest of the state and the project:~~]

[~~(1) is compatible with existing and planned transportation facilities; and~~]

[~~(2) furthers state, regional, and local transportation plans, programs, policies, and goals.~~]

(b) Contents of pass-through agreement. Before any work is done for which reimbursement will be requested through a pass-through toll or fare, the department and the public or private entity shall execute a pass-through agreement containing, at a minimum, the following:

(1) identification of the scope and nature of the work to be performed;

(2) all financial terms, as applicable, including the levels of pass-through tolls or fares, maximum and minimum periodic payments, and maximum and minimum total payments;

(3) allocation of responsibility for all significant work to be performed, including environmental documentation, right of way acquisition, utility adjustments, engineering, construction, and maintenance;

(4) provision for the collection and use of toll or other revenues, if applicable;

(5) all provisions required by state or federal law;

(6) a map showing the location of the project;

(7) a proposed project schedule;

(8) an estimated budget;

(9) procedures and timelines for the submission of materials and for approvals; and

(10) for a local government, a copy of the resolution or ordinance authorizing execution of the agreement.

*§5.57. Calculation [~~Payment~~] of Pass-Through Fares and Tolls.*

(a) Pass-through fares.

(1) Amount to be reimbursed.

(A) General. The commission shall establish the level of pass-through fares or shall establish parameters within which the department may negotiate the level of pass-through fares. In establishing the level of pass-through fares or parameters within which the department may negotiate the level of pass-through fares, the commission shall consider whether:

*(i)* the project's estimated benefits to mobility warrant a pass-through fare at a level that is more or less than the department's estimate of project costs;

*(ii)* the project will result in a significant economic gain or loss to the entity responsible for its development;

*(iii)* the public or private entity proposes to share in the cost of the project; and

*(iv)* the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through fare levels.

*(i)* The commission will not approve payment by the department of a level of pass-through fares that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through fares that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

*(ii)* In determining the level of pass-through fares, the commission will not consider any financing cost incurred by the public or private entity.

(2) Payment schedule and method.

(A) Payment schedule. The schedule of pass-through fare payments will be calculated based on the department's traffic projections for the railway and a number and frequency of payments to be negotiated between the department and the public or private entity. The payment schedule may include a maximum and a minimum periodic amount to be paid annually or in total.

(B) Variable payments. The pass-through fare may vary on any basis that reasonably reflects the value of improvements, the nature of the railway traffic, or benefits to the highway system, including:

*(i)* number, type, and class of passengers;

*(ii)* type of freight;

*(iii)* tonnage of freight;

*(iv)* number or type of cars;

*(v)* mileage traveled; or

*(vi)* characteristics of track.

(3) Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns. Pass-through fare payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through fare will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through fare amount specified by the commission in approving the pass-through fare.

(b) Pass-through tolls.

(1) Level of pass-through tolls.

(A) General. The commission shall establish the level of pass-through tolls or shall establish parameters within which the department may negotiate the level of pass-through tolls. In establishing the level of pass-through tolls or parameters within which the department may negotiate the level of pass-through tolls, the commission shall consider whether:

*(i)* the project's estimated benefits to mobility warrant a pass-through toll at a level that is more or less than the department's estimate of project costs;

*(ii)* the project will result in a significant economic gain or loss to the entity responsible for its development;

*(iii)* the public or private entity proposes to share in the cost of the project; and

*(iv)* the state or the public or private entity will benefit, and to what extent, if the project is built sooner than would be the case in the absence of a pass-through agreement.

(B) Limits on pass-through toll levels.

*(i)* The commission will not approve payment by the department of a level of pass-through tolls that exceeds the department's estimate, except as permitted by this subparagraph. The commission may approve the department's payment of a level of pass-through tolls that exceeds the department's current estimate, but only by the difference between the department's current estimate and the department's estimate for the time when the project would likely have been completed in the absence of a pass-through agreement.

*(ii)* In determining the level of pass-through tolls, the commission will not consider any financing cost incurred by the public or private entity.

[~~(a) Amount to be reimbursed.~~]

[~~(1) General. Except as provided in paragraph (2) of this subsection, the department will reimburse the developer, through the periodic payment of pass-through tolls, an amount equal to the department estimate.~~]

[~~(2) Exception.~~]

[~~(A) The commission may direct the department to provide for reimbursement in an amount less than the department estimate if:~~]

*[~~(i)~~* ~~it determines that the project's estimated benefits to mobility do not warrant full reimbursement;~~]

*[~~(ii)~~* ~~it determines that the construction of the project will result in a significant economic gain to the developer; or~~]

*[~~(iii)~~* ~~the developer proposes to share in the cost of the project.~~]

[~~(B) The commission may direct the department to provide for reimbursement in an amount more than the department estimate if the commission determines that there will be a financial benefit to the state, through the avoidance of inflation, as a result of building the project sooner. The additional amount authorized by the commission may not be more than the amount of the financial benefit determined by the commission.~~]

[~~(C) The commission may establish the precise amount to be reimbursed or may establish parameters within which the executive director may negotiate.~~]

(2) [~~(b)~~] Payment schedule and method.

(A) [~~(1)~~] Payment schedule. The schedule of pass-through toll payments will be calculated based on the department's traffic projections for the highway and a number and frequency of payments [~~contract period~~] to be negotiated between the department and the public or private entity [~~developer~~]. The payment schedule may

include a maximum and a minimum annual amount to be paid periodically or in total. [Payments will be made in accordance with subsection (c)(2) of this section.]

(B) [(2)] Variable payments. The pass-through toll [per vehicle fee] may vary on any basis that reasonably reflects the value of improvements, the nature of the highway, or benefits to other aspects of the highway system, including: [within different levels of traffic volume and by type of vehicle using the facility.]

*(i)* the number of vehicles using the highway;

*(ii)* the number of vehicle-miles traveled on the highway;

*(iii)* the condition of the highway; and

*(iv)* whether the highway is tolled.

(3) [(c)] Allocation of risk.

(A) Cost overruns and underruns. Unless otherwise authorized by the commission and incorporated in a pass-through agreement by the department, the department's liability under a pass-through agreement shall be neither increased nor decreased by cost overruns or underruns.

*(i)* Projects developed by the public or private entity. If the project is being developed by the public or private entity, the pass-through toll payments by the department shall not be increased if there is a cost overrun or decreased if there is a cost underrun unless an adjustment is specifically authorized by the commission and incorporated in a pass-through agreement by the department.

*(ii)* Projects developed by the department. If the project is being developed by the department, the pass-through agreement shall provide that the pass-through toll or the maximum amount payable, or both, shall be adjusted to reflect the department's actual costs unless the commission specifically directs that the department shall bear the risk of cost overruns or underruns.

(B) Traffic volume. If traffic volume exceeds or falls below expectations, the pass-through toll will not be adjusted. Payments shall not exceed the maximum annual amount specified in the pass-through agreement and shall not be below the minimum annual amount specified in the pass-through agreement. The pass-through agreement shall provide that if required, payments shall continue until the total of all payments equals the total pass-through toll amount specified by the commission in approving the pass-through toll.

[(1) Construction and operation costs.]

[(A) Cost overruns. Unless otherwise specified in the agreement, the developer is responsible for cost overruns caused by any reason. The department may agree to share identified cost overruns if it deems such action to be in the state's interest. The department may agree to alter the payment schedule based upon cost overruns provided that the agreement establishes a maximum amount or rate by which the department will do so.]

[(B) Cost underruns. If actual costs are below the department estimate, the developer is not required to repay the department the difference between the actual costs and the amount designated in the agreement.]

[(2) Traffic volume.]

[(A) If traffic volume exceeds projections, the department will not be responsible for annual payments above the highest amount designated in the agreement. If traffic volume is less than projected, the department will pay at least the lowest amount designated in the agreement.]

[(B) If traffic volume exceeds projections, the department may agree to reduce the time period in which the developer is reimbursed the amount designated in the agreement. If traffic volume is less than projected, the term of the agreement will be extended until the developer is reimbursed the amount designated in the agreement.]

*§5.58. Project Development by Public or Private Entity.*

(a) Social and environmental impact.

(1) General. A public or private entity [developer] that is responsible for the construction of a project shall conduct the environmental review and public involvement for the project in the manner prescribed by Chapter 2, Subchapter C of this title (relating to Environmental Review and Public Involvement for Transportation Projects). The department may choose to conduct the environmental review and public involvement.

(2) Department [Commission] approval. The department [commission] must approve each environmental review under this section before construction of the project begins.

(b) Right of way and utilities.

(1) Responsibility. This subsection applies when the public or private entity is responsible for the acquisition of right of way or the adjustment of utilities.

(2) Right of way procedures.

(A) Manual requirements. The acquisition of right of way performed by or on behalf of the public or private entity shall comply with the latest version of each of the department's manuals.

(B) Alternative procedures. A public or private entity may request written approval to use a different accepted procedure for a particular item or phase of work. The use of an alternative procedure is subject to the approval of the Federal Highway Administration. The executive director may approve the use of an alternative procedure if the alternative procedure is determined to be sufficient to discharge the department's state and federal responsibilities in acquiring real property.

(3) Utility adjustments. The adjustment, removal, or relocation of utility facilities performed by or on behalf of the public or private entity shall comply with applicable federal and state laws and regulations.

(c) [(b)] Design and construction.

(1) Responsibility. This subsection applies when the public or private entity is [The developer is fully] responsible for the design, construction, and, operation, as applicable, of each project it undertakes. This responsibility includes ensuring that all EPIC are addressed in project design and carried out during project construction and operation.

(2) Design criteria.

(A) State criteria. All designs developed by or on behalf of the public or private entity [developer] shall comply with the latest version of the department's manuals. [, including, but not limited to,]

*(i)* Highway projects. Each highway project shall, at a minimum, comply with the:

*(I)* [the] Roadway Design Manual; [,]

*(II)* Pavement Design Manual; [,]

*(III)* Hydraulic Design Manual; [,]

*(IV)* [the] Texas Manual on Uniform Traffic Control Devices; [, and]

*(V)* Bridge Design Manual; [,] and

*(VI)* [the] Texas Accessibility Standards.

*(ii)* Railway projects. Each railway project shall comply, at a minimum, with the current version of the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) Alternative criteria. A public or private entity [developer] may request approval to use different accepted criteria for a particular item of work. Alternative criteria may include [, but are not limited to,] the latest version of the AASHTO Policy on Geometric Design of Highways and Streets, the AASHTO Pavement Design Guide, and the AASHTO Bridge Design Specifications. The use of alternative criteria is subject to the approval of the Federal Highway Administration or the Federal Railroad Administration for those projects involving federal funds. The executive director may approve the use of alternative criteria if the alternative criteria are determined to be sufficient to protect the safety of the traveling public and protect the integrity of the transportation system.

(C) Exceptions to design criteria. A public or private entity [developer] may request approval to deviate from the state or alternative criteria for a particular design element on a case-by-case [case by case] basis. The request for approval shall state the criteria for which an exception is being requested and must include a comprehensive description of the circumstances and engineering analysis supporting the request. The executive director may approve an exception after determining that the particular criteria could not reasonably be met due to physical, environmental, or other relevant factors and that the proposed design is a prudent engineering solution.

(3) Access to a highway project.

(A) Access management. Access to a highway [the facility] shall be in compliance with the department's access management policy.

(B) Interstate access. For proposed highway projects that will change the access control line to an interstate highway, the public or private entity [developer] shall submit to the department all data necessary for the department to request Federal Highway Administration approval.

(4) Preliminary design submission and approval. When design is approximately 30% complete [(] or as otherwise provided in a pass-through [an] agreement [)], the public or private entity [developer] shall send the following preliminary design information to the department for review and approval in accordance with the procedures and timeline established in the project development agreement described in subsection (d) of this section:

(A) for a highway project, a completed Design Summary Report form as contained in the department's Project Development Process Manual;

(B) a design schematic depicting plan, profile, and superelevation information for each roadway or a design schematic depicting plan, profile, and superelevation based on top of railway for each railway line;

(C) typical sections showing existing and proposed horizontal dimensions, cross slopes, location of profile grade line, pavement layer thickness and composition, earthen slopes, and right of way lines for each roadway or subballast and ballast layer thickness and composition for each railway line;

(D) bridge, retaining wall, and sound wall layouts;

(E) hydraulic studies and drainage area maps showing the drainage of waterways entering the project and local project drainage;

(F) an explanation of the anticipated handling of existing traffic during construction;

(G) when structures meeting the definition of a bridge as defined by the National Bridge Inspection Standards are proposed, an indication of structural capacity in terms of design loading;

(H) an explanation of how the U.S. Army Corps of Engineers permit requirements, including associated certification requirements of the Texas Commission on Environmental Quality, will be satisfied if the project involves discharges into waters of the United States; and

(I) for a highway project, the location and text of proposed mainlane guide signs shown on a schematic that includes lane lines or arrows indicating the number of lanes.

(5) Highway construction [Construction] specifications.

(A) All plans, specifications, and estimates developed by or on behalf of the public or private entity for a highway project [developer] shall conform to the latest version of the department's Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, and shall conform to department-required special specifications and special provisions.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the traveling public.

(6) Railway construction specifications.

(A) All plans, specifications, and estimates developed by or for the public or private entity for a railway project shall conform to all construction and material specifications established in the American Railway Engineering and Maintenance of Right of Way Association standards.

(B) The executive director may approve the use of an alternative specification if the proposed alternative specification is determined to be sufficient to ensure the quality and durability of the finished product for the intended use and the safety of the public and the railway system.

(7) [(6)] Submission and approval of final design plans and contract administration procedures. When final plans are complete, the public or private entity [developer] shall send the following information to the executive director for review and approval in accordance with the procedures and timelines established in the project development agreement described in subsection (e) of this section:

(A) seven copies of the final set of plans, specifications, and engineer's estimate (PS&E) that have been signed and sealed by the responsible engineer;

(B) revisions to the preliminary design submission previously approved by the department in a format that is summarized or highlighted for the department;

(C) a proposal for awarding the construction contract in compliance with applicable state and federal requirements;

(D) contract administration procedures for the construction contract with criteria that comply with the applicable national or state administration criteria and manuals; and

(E) the location and description of all EPIC addressed in construction.

(8) [~~(7)~~] Construction inspection and oversight.

(A) Unless the department agrees in writing to assume responsibility for some or all of the following items, the public or private entity [~~developer~~] is responsible for:

*(i)* overseeing all construction operations, including the oversight and follow through with all EPIC;

*(ii)* assessing contract revisions for potential environmental impacts; and

*(iii)* obtaining any necessary EPIC required for contract revisions.

(B) The department may inspect the construction of the project at times and in a manner it deems necessary to ensure compliance with this section.

(9) [~~(8)~~] Contract revisions. All revisions to the construction contract shall comply with the latest version of the applicable national or state administration criteria and manuals, and must be submitted to the department for its records. Any revision that affects prior environmental approvals or significantly revises project scope or the geometric design must be submitted to the executive director for approval prior to beginning the revised construction work. Procedures governing the executive director's approval, including time limits for department review, shall be included in the project agreement described in subsection (e) of this section.

(10) [~~(9)~~] As-built plans. Within six months after final completion of the construction project, the public or private entity [~~developer~~] shall file with the department a set of the as-built plans incorporating any contract revisions. These plans shall be signed, sealed, and dated by a professional engineer licensed in Texas certifying that the project was constructed in accordance with the plans and specifications.

(11) [~~(10)~~] Document and information exchange. The public or private entity [~~developer~~] agrees to deliver to the department all materials used in the development of the project including [~~, but not limited to,~~] aerial photography, computer files, surveying information, engineering reports, environmental documentation, general notes, specifications, and contract provision requirements.

(12) [~~(11)~~] State and federal law. The public or private entity [~~developer~~] shall comply with all federal and state laws and regulations applicable to the project and the state highway system, and shall provide or obtain all applicable permits, plans, and other documentation required by a federal or state entity.

(d) [~~(c)~~] Contracts. All contracts for the development, construction, or operation of a project shall be awarded in compliance with applicable law.

(e) [~~(d)~~] Federal law. If any federal funds are used in the development or construction of a project under this subchapter, or if the department intends to fund pass-through toll payments with federal funds, the development and construction of the project shall be accomplished in compliance with all applicable federal requirements.

[~~(e) Project development agreement. The developer and the department shall enter into an agreement governing the development of a project under this subchapter. The agreement shall, at a minimum, include:~~]

[~~(1) the responsibilities of each party concerning the design and construction of the project;~~]

[~~(2) procedures governing the submittal of information required by this subchapter;~~]

[~~(3) timelines governing approvals of the executive director under this subchapter; and~~]

[~~(4) other terms or conditions mutually agreed upon by the parties.~~]

*§5.59. Operation.*

(a) Agreement. A pass-through [~~toll~~] agreement may provide for a public or private entity [~~developer~~] to operate a highway or a railway.

(b) Responsibility. To the extent provided in the agreement, a public or private entity [~~developer~~] shall perform or cause to be performed all work required to operate the highway or railway. This work includes all maintenance and repair required to ensure that the highway or railway functions as intended and meets the performance standards established for maintenance under subsection (c) of this section.

(c) Maintenance of highways.

[~~(1)~~] [~~Department standards.~~ ]In performing work under this section on a highway, the public or private entity [~~developer~~] shall meet or exceed the most current "Texas Maintenance Assessment Program" minimum rating requirements for non-interstate state highways as established by the commission in its implementation of Government Accounting Standards Board [~~Boards~~] Statement No. 34. If the highway will be tolled, the public or private entity [~~developer~~] shall meet or exceed the minimum rating requirements for interstate highways.

(d) Maintenance of railways. In performing work under this section on a railway, the public or private entity shall meet all standards for safety and maintenance established by the Federal Railroad Administration and the National Transportation Safety Board, including all standards published in 49 CFR Subtitle B, Chapters II and VIII.

(e) [~~(2)~~] Alternative standards. A public or private entity [~~developer~~] may request approval to use alternative maintenance standards. The executive director may approve the use of alternative maintenance standards if the director determines that the alternative standards are sufficient to protect the safety of the [~~traveling~~] public and to protect the integrity of the transportation system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

## CHAPTER 21. RIGHT OF WAY
## SUBCHAPTER B. UTILITY ADJUSTMENT, RELOCATION, OR REMOVAL
### 43 TAC §21.23

The Texas Department of Transportation (department) proposes new §21.23 concerning state participation for utility adjustments, relocations, or removals made on toll-related facilities.

EXPLANATION OF PROPOSED NEW SECTION

House Bill 2702, 79th Legislature, Regular Session, 2005, amended Transportation Code, §203.092. The amendments to Transportation Code, §203.092, require the department and utilities to share equally the costs of utility adjustments, relocations, or removals made prior to September 1, 2007 on toll-related state highway improvements.

The new section is necessary to implement this legislation and to establish procedures concerning reimbursement of public utilities for facility adjustments, relocations, or removals undertaken on toll-related facilities.

In order to ensure that eligible costs are properly incurred and tracked, new §21.23 requires a utility that is relocating facilities on a toll-related facility to enter into an agreement with the department or, under certain circumstances, a department contractor, prior to commencing work. Eligibility to enter an agreement is determined by the department or its contractor based on the existence of a conflict between a utility's facility and the proposed toll facility. If a dispute arises as to a utility's eligibility, a utility may appeal to the Director of the Right of Way Division. The section also establishes eligible relocation costs in accordance with Transportation Code, §203.092(d). To be consistent with the September 1, 2007 expiration of the reimbursement authorization in Transportation Code, §203.092, §21.23, paragraph (2) of subsection (d), limits reimbursement eligibility to those costs actually incurred prior to September 1, 2007.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the section as proposed.

John Campbell, Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT

Mr. Campbell has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be an understanding of criteria required for relocating utilities to receive reimbursement. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to John Campbell, Director, Right of Way Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on March 13, 2006.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 203, which authorizes the commission to construct a modern state highway system.

CROSS REFERENCE TO STATUTE

Transportation Code, §203.092.

*§21.23. State Participation in Toll-Related Relocations.*

(a) This section applies to the relocation of utility facilities made necessary by:

(1) an improvement of a nontolled state highway facility to add one or more tolled lanes;

(2) an improvement of a nontolled state highway that has been converted to a toll project on the state highway system; or

(3) the construction on a new location of a toll project on the state highway system or the expansion of such a toll project.

(b) As a condition for reimbursement under this section:

(1) the Texas Transportation Commission must designate the highway facility to be constructed or improved as a toll project; and

(2) the utility owner must enter into an agreement concerning the terms of the relocation under subsection (c) of this section.

(c) Agreement.

(1) The utility owner, prior to incurring relocation costs, shall enter into an agreement concerning the terms of the relocation with the department, or with a department contractor under a comprehensive development agreement whose scope of work includes responsibility for utility relocations made necessary by the project.

(2) Execution of an agreement shall be based on a determination by the department, or a department contractor if authorized under a comprehensive development agreement, that a conflict exists between a proposed project and a utility facility.

(3) If a dispute arises concerning the existence of a conflict, the Right of Way Director may authorize the execution of a toll road utility agreement based on evidence presented by the affected utility.

(d) Eligible relocation costs.

(1) Eligible relocation costs include necessary material acquisition, engineering and planning costs, and the physical installation of materials.

(2) The department will reimburse 50% of eligible relocation costs that are actually incurred prior to September 1, 2007. Relocation costs incurred on or after September 1, 2007 will not be reimbursed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600423
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 12, 2006
For further information, please call: (512) 463-8683

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

### CHAPTER 179. TEXAS SMALL BUSINESS INDUSTRIAL DEVELOPMENT CORPORATION

**10 TAC §§179.1 - 179.6**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new sections, submitted by the Office of the Governor, Economic Development and Tourism Division have been automatically withdrawn. The new sections as proposed appeared in the July 22, 2005 issue of the *Texas Register* (30 TexReg 4167).

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600413

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## TITLE 22. EXAMINING BOARDS

### PART 11. BOARD OF NURSE EXAMINERS

### CHAPTER 221. ADVANCED PRACTICE NURSES

**22 TAC §221.12**

The Board of Nurse Examiners withdraws the proposed amendments to 22 TAC §221.12, concerning Advanced Practice Nurses. The proposed amendments were published in the November 11, 2005, issue of the *Texas Register* at (30 TexReg 7354). Section 221.12, relating to Scope of Practice for advanced practice nurses, stated that the advanced practice nurse's scope of practice is based upon educational preparation, continued advanced practice experience and the accepted scope of professional practice of the particular specialty area. The rule further indicated that the scope of practice of particular specialty areas is defined by national professional specialty organizations or advanced practice nursing organizations recognized by the Board.

Comments: Three comments were received in response to the proposed rule. Comments were submitted by State Representative Vicki Truitt, the Texas Medical Association (TMA), and the Texas Society of Anesthesiologists (TSA). Each of the comments expressed concern that, by eliminating the requirement that the Board review and approve each individual scope of practice statement, the Board is granting private entities the authority to establish scope of practice for nurses in Texas. Additionally, TSA has requested a public hearing in connection with the proposed rule change.

Response: The revisions to the rule that were proposed by the Board are consistent with practices employed by other state agencies. For example, in its rules relating to Office Based Anesthesia (22 TAC Chapter 192), the Texas Medical Board refers to standards set forth by the American Society of Anesthesiologists. Relying on scope of practice statements from professional organizations allows regulatory agencies to rely on evidence-based standards that have gone through rigorous review and evaluation at the national level. Although the proposed amendment continued to only permit practice that is consistent with state laws and regulations, the Board has elected to withdraw the proposed amendment at this time to allow for further analysis.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600461
Katherine Thomas
Executive Director
Board of Nurse Examiners
Effective date: January 30, 2006
For further information, please call: (512) 305-6823

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 65. WILDLIFE

### SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

### DIVISION 1. GENERAL PROVISIONS

**31 TAC §65.4**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Texas Parks and Wildlife Department has been automatically withdrawn. The new section as proposed appeared in the July 22, 2005 issue of the *Texas Register* (30 TexReg 4199).

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600414

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 16. ECONOMIC REGULATION

## PART 1. RAILROAD COMMISSION OF TEXAS

### CHAPTER 9. LP-GAS SAFETY RULES

### SUBCHAPTER A. GENERAL REQUIREMENTS

**16 TAC §9.9, §9.51**

The Railroad Commission of Texas adopts amendments to §9.9, relating to Requirements for Certificate Renewal, and §9.51, relating to General Requirements for Training and Continuing Education, without changes from the versions published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7645). The Commission adopts these amendments to improve the efficiency and recover the cost of administering LP-gas examinations, examination renewals and training requirements for persons who handle LP-gas in the course of their employment with a state agency, county, municipality, school district, or other governmental subdivision, and who elect to become Railroad Commission certified to perform LP-gas activities even though they are not required to do so and would not be required to do so under the amendments as proposed. Aside from some competitive grants, the Commission's LP-gas training and continuing education program is funded entirely from receipts of LP-gas certified individuals' $35 annual examination renewal fees and $75 per day seminar fees, which are appropriated to the Commission for the training and continuing education program by a rider in the General Appropriations Act. No state general tax revenue is appropriated or used to fund this program. For this reason, it is important that the Commission recover the cost of providing LP-gas training and continuing education services to employees of public organizations who voluntarily elect to become certified. The Commission adopts an effective date of March 1, 2006, for these amendments.

In §9.9, the Commission removes the sentence in subsection (c) that authorizes the exemption from annual certificate renewal fees for employees of a state agency, county, municipality, school district, or other governmental subdivision.

In §9.51(b)(3)(C), the Commission amends the current exemption from training and continuing education requirements for employees of a state agency, county, municipality, school district, or other governmental subdivision. As amended, the employees of these public entities that are or become certified would be subject to the Commission's training and continuing education requirements. In subsection (b)(4), the Commission amends the wording to clarify that all employers must properly supervise all of their employees who perform LP-gas activities, whether or not the employees are certified; that all public-entity employers must properly train their uncertified employees, but only those who perform LP-gas activities; that all public-entity employees who perform any LP-gas activity must be trained, not just those who service or refuel LP-gas vehicles; and that either the employer or a competent person other than the employer may provide the training, e.g., a Railroad Commission Category E licensee, an RRC-authorized outside trainer, or an AFRED instructor. In subsection (f)(2)(E), the Commission removes the exemption from payment of the non-credit class fee for political subdivisions, and will authorize waiver of the fees if the Commission recovers its costs for a class from another source, such as from a competitive grant.

The Commission received no comments on the proposed amendments.

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and §113.088, which requires the Commission to establish reasonable examination, course of instruction, and seminar registration fees, and authorizes, but does not require, the Commission to exempt public employees of the State of Texas or state subdivisions from the examination fee, the examination renewal fee, and seminar fees.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.088.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on January 24, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2006.

TRD-200600379
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Effective date: March 1, 2006
Proposal publication date: November 18, 2005
For further information, please call: (512) 475-1295

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## PART 6. TEXAS MOTOR VEHICLE BOARD

## CHAPTER 101. PRACTICE AND PROCEDURE

The Texas Department of Transportation (department) adopts the repeal of Title 16, Part 6, Chapter 101, which consists of Subchapter A, §§101.1 - 101.16, concerning general rules; Subchapter B, §§101.22 - 101.25, 101.27, and 101.28, concerning rulemaking proceedings and hearings; and Subchapter C, §§101.41 - 101.64, 101.66, and 101.67, concerning adjudicative proceedings and hearings. The repeal of §§101.1 - 101.16, 101.22 - 101.25, 101.27, 101.28, 101.41 - 101.64, 101.66, and 101.67 is adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6551) and will not be republished.

EXPLANATION OF REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, dissolved the Motor Vehicle Board (board) and transferred its rulemaking responsibilities to the Texas Transportation Commission (commission). Therefore it is necessary to repeal Title 16, Part 6 and simultaneously adopt new sections under Title 43 to reflect the new delegation of duties and to transfer the rules to the appropriate title. Some sections are not reenacted because they were specific to board operations and are no longer necessary.

Subchapter A of Chapter 101, consisting of §§101.1 - 101.16, are the General Rules of Practice and Procedure relating to submissions to and practice before the director of the Motor Vehicle Division. These sections will be reenacted in Title 43, Chapter 8.

Subchapter B of Chapter 101, consisting of §§101.22 - 101.25, 101.27, and 101.28, relate to rulemaking by the board. Sections 101.22 - 101.25 and §101.27 are unnecessary and are not reenacted. Section 101.28 is reenacted in Chapter 8 of Title 43.

Subchapter C of Chapter 101, consisting of §§101.41 - 101.64, 101.66, and 101.67, relate to Adjudicative Proceedings and Hearings before the director of the Motor Vehicle Division. All sections except for §101.63, Filing of Documents for Consideration by Board Members, is reenacted in Chapter 8 of Title 43. Section 101.63 imposed deadlines for submission of documents that no longer apply, inasmuch as contested cases are no longer considered at regularly scheduled board meetings.

COMMENTS

The department conducted five statewide public hearings to receive comments concerning the repeals. No comments on the proposed repeals were received.

## SUBCHAPTER A. GENERAL RULES

### 16 TAC §§101.1 - 101.16

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301.

CROSS REFERENCE TO STATUTE

Occupations Code, §2301.002 and §2301.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600434
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## SUBCHAPTER B. RULEMAKING PROCEEDINGS AND HEARINGS

### 16 TAC §§101.22 - 101.25, 101.27, 101.28

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301.

CROSS REFERENCE TO STATUTE

Occupations Code, §2301.002 and §2301.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600435
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## SUBCHAPTER C. ADJUDICATIVE PROCEEDINGS AND HEARINGS

### 16 TAC §§101.41 - 101.64, 101.66, 101.67

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301.

CROSS REFERENCE TO STATUTE

Occupations Code, §2301.002 and §2301.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600436
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## CHAPTER 103. GENERAL RULES

**16 TAC §§103.1 - 103.17**

The Texas Department of Transportation (department) adopts the repeal of Title 16, Part 6, Chapter 103, which consists of §§103.1 - 103.17, concerning general rules related to the licensing of motor vehicle dealers. This chapter provides guidance to licensed dealers regarding motor vehicle license renewals, protests, and franchises governed by the Occupations Code, Chapter 2301. The repeal of §§103.1 - 103.17 is adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6553) and will not be republished.

EXPLANATION OF REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, dissolved the Motor Vehicle Board (board) and transferred its rulemaking responsibilities to the Texas Transportation Commission (commission). Therefore it is necessary to repeal Title 16, Part 6 and simultaneously adopt new sections under Title 43 to reflect the new delegation of duties and to transfer the rules to the appropriate title. Sections 103.1 - 103.16 are reenacted in Title 43, Chapter 8. Section 103.17, Motorized Scooters, is not reenacted.

House Bill 2702 also amended Transportation Code, Chapter 551, by defining "pocket bike or minimotorbike" as a self-propelled vehicle that is equipped with an electric motor or internal combustion engine having a piston displacement of less than 50 cubic centimeters, is designed to propel itself with not more than two wheels in contact with the ground, has a seat or saddle for the use of the operator, is not designed for use on a highway, and is ineligible for a certificate of title under Chapter 501. The amendments to Transportation Code, Chapter 551 further state that the statute may not be construed to authorize the operation of a pocket bike or minimotorbike on any highway, road, street, bicycle path or sidewalk.

Occupations Code, §2301.002(23)(A) defines a motor vehicle as "a fully self-propelled vehicle having two or more wheels that has as its primary purpose the transport of a person or persons, or property on a public highway . . ." The board previously adopted §103.17 to regulate sales of pocket bikes under the assumption that certain motorized scooters could be driven on public roadways based upon that statutory language.

House Bill 2702 makes it clear that pocket bikes may not be driven on public streets. Thus, pocket bikes do not fall under the definition of "motor vehicle" in Occupations Code, §2301.002(23)(A), and their distribution is no longer subject to regulation.

COMMENTS

The department conducted five statewide public hearings to receive comments concerning the repeals. No comments on the proposed repeals were received.

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301.

CROSS REFERENCE TO STATUTE

Occupations Code, §2301.002 and §2301.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600437
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## CHAPTER 105. ADVERTISING

**16 TAC §§105.1 - 105.17, 105.19 - 105.32**

The Texas Department of Transportation (department) adopts the repeal of Title 16, Part 6, Chapter 105, which consists of §§105.1 - 105.17 and §§105.19 - 105.32, concerning advertising. The repeal of §§105.1 - 105.17 and §§105.19 - 105.32 is adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6554) and will not be republished.

EXPLANATION OF REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, dissolved the Motor Vehicle Board (board) and transferred its rulemaking responsibilities to the Texas Transportation Commission (commission). Therefore it is necessary to repeal Title 16, Part 6 and simultaneously adopt new sections under Title 43 to reflect the new delegation of duties and to transfer the rules to the appropriate title. Chapter 105 is reenacted in Chapter 8 of Title 43.

COMMENTS

The department conducted five statewide public hearings to receive comments concerning the repeals. No comments on the proposed repeals were received.

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2301.002, 2301.005 and 2301.203(c).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600438
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## CHAPTER 107. WARRANTY PERFORMANCE OBLIGATIONS

### 16 TAC §§107.1 - 107.11

The Texas Department of Transportation (department) adopts the repeal of Title 16, Part 6, Chapter 107, which consists of §§107.1 - 107.11, concerning warranty performance obligations. The repeal of §§107.1 - 107.11 is adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6555) and will not be republished.

EXPLANATION OF REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, dissolved the Motor Vehicle Board (board) and transferred its rulemaking responsibilities to the Texas Transportation Commission (commission). Therefore it is necessary to repeal Title 16, Part 6 and simultaneously adopt new sections under Title 43 to reflect the new delegation of duties and to transfer the rules to the appropriate title. Sections 107.1 - 107.10 will be reenacted in Title 43, Chapter 8. Section 107.11, Reports to Board, will not be reenacted because it is specific to board operations and no longer necessary.

COMMENTS

The department conducted five statewide public hearings to receive comments concerning the repeals. No comments on the proposed repeals were received.

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005(e), 2301.155, and 2301.602, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301.

CROSS REFERENCE TO STATUTE

Occupations Code, §§2301.002, 2301.005, 2301.204 and 2301.601 - 2301.613.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600439
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## CHAPTER 109. LESSORS AND LEASE FACILITATORS

### 16 TAC §§109.1 - 109.12

The Texas Department of Transportation (department) adopts the repeal of Title 16, Part 6, Chapter 109, which consists of §§109.1 - 109.12, concerning lessors and lease facilitators. The repeal of §§109.1 - 109.12 is adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6555) and will not be republished.

EXPLANATION OF REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, dissolved the Motor Vehicle Board (board) and transferred its rulemaking responsibilities to the Texas Transportation Commission (commission). Therefore it is necessary to repeal Title 16, Part 6 and simultaneously adopt new sections under Title 43 to reflect the new delegation of duties and to transfer the rules to the appropriate title. Sections 109.1 - 109.7 and §§109.9 - 109.12 is reenacted in Chapter 8 of Title 43. Section 109.8, Refund of Fees, is not reenacted because it duplicates other rules regarding fees and is no longer necessary.

COMMENTS

The department conducted five statewide public hearings to receive comments concerning the repeals. No comments on the proposed repeals were received.

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301.

CROSS REFERENCE TO STATUTE

Occupations Code, §2301.002 and §2301.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600440

Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## CHAPTER 111. GENERAL DISTINGUISHING NUMBERS

The Texas Department of Transportation (department) adopts the repeal of Title 16, Part 6, Chapter 111, which consists of §§111.1 - 111.12 and §§111.14 - 111.20, concerning general distinguishing numbers. The repeal of §§111.1 - 111.12 and §§111.14 - 111.20 is adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6556) and will not be republished.

EXPLANATION OF REPEALS

House Bill 2702, 79th Legislature, Regular Session, 2005, dissolved the Motor Vehicle Board (board) and transferred its rulemaking responsibilities to the Texas Transportation Commission (commission). Therefore it is necessary to adopt the repeal of Title 16, Part 6 and simultaneously adopt new sections under Title 43 to reflect the new delegation of duties and to transfer the rules to the appropriate title. Chapter 111 will be reenacted in Chapter 8 of Title 43.

The effective date for the repeal of the temporary tag designs in §111.8 is delayed until April 30, 2006. The extension of this effective date allows for the continuation of the existing temporary tags during the transition stage for the new format required in new 43 TAC §8.138 and §8.146 adopted in conjunction with this repeal.

COMMENTS

The department conducted five statewide public hearings to receive comments concerning the repeals. No comments on the proposed repeals were received.

**16 TAC §§111.1 - 111.7, 111.9 - 111.12, 111.14 - 111.20**

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301; and Transportation Code, §503.002, which provides the commission with the authority to adopt rules to administer Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, §2301.002 and §2301.005, and Transportation Code, Chapter 503.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600441
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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**16 TAC §111.8**

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005(e) and §2301.155, which provides the commission with the authority to adopt rules to administer Occupations Code, Chapter 2301; and Transportation Code, §503.002, which provides the commission with the authority to adopt rules to administer Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, §2301.002 and §2301.005, and Transportation Code, Chapter 503.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600442
Richard D. Monroe
General Counsel, Texas Department of Transportation
Texas Motor Vehicle Board
Effective date: April 30, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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# TITLE 22. EXAMINING BOARDS

## PART 11. BOARD OF NURSE EXAMINERS

### CHAPTER 213. PRACTICE AND PROCEDURE

**22 TAC §213.30**

The Board of Nurse Examiners adopts without changes an amendment to 22 TAC §213.30, concerning Declaratory Order of Eligibility for Licensure. The proposed amendment was published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7349).

This section addresses the requirements for initial licensure and the eligibility process. The amendment specifically adds new subsection (h) and relates to decisions that are made to deny eligibility for licensure in Texas.

One comment was received in response to the proposed amendment and was submitted by the Texas Nurses Association. The

comment expressed concern that individuals who are proposed to be denied by the Executive Director or the Eligibility Committee and request a hearing at SOAH will be penalized with a waiting period of three years, while those individuals who withdraw their appeal will be allowed to repetition in one year. TNA stated that §213.30(h) is inconsistent with the Legislative intent of Texas Occupation Code §301.257(e) which states that "[i]f the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings."

The board disagrees that the proposed amendment is inconsistent with §301.257. Section 301.257(e) only speaks to an applicant's rights when there is a *proposed* denial of licensure. The applicant is clearly allowed to a hearing as required by §301.257(e). However, §301.257(e) does not address an applicant's rights to repetition after a formal hearing before SOAH that results in a Final Board Order. In fact, §301.257(f) provides that "in the absence of new evidence known but not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice and order." Proposed §213.30(h) would allow the petitioner to repetition with the concomitant due process rights after three years and is a reasonable policy in light of the Board's express and implied authority. Section 213.30(h) is consistent with the Board's current §213.27(f) which expresses the exact policy and has never been challenged.

TNA further states that the proposed amendment serves no public purpose other than to discourage individuals from exercising their due process right. TNA states that exercising a right to SOAH review is not inconsistent with wanting to correct the underlying basis for the proposed denial. Staff disagrees with TNA's comments. An individual is still entitled to a hearing if he disagrees on the proposed denial of eligibility and believes that he does not have a ground for ineligibility. SOAH review is statutorily authorized and not prevented by the proposed amendment. The rule would require a waiting period only after a final order confirming on what ground of ineligibility exists. The petitioner is never prevented from seeking a hearing as authorized by §301.257(e). In fact, the proposed rule actually permits re-petitioning after three years of an adjudication of ineligibility.

Lastly, TNA states that the BNE cannot justify imposing a different requirement based on whether an individual elected to exercise a right to a hearing. The board disagrees with this comment because the Board's enabling legislation expressly differentiates between a proposal to find an applicant ineligible (§301.257(e)) and an adjudication that an applicant is ineligible (§301.257(f)). The proposed amendment is a reasonable policy based on the Board's statute.

The amendment is adopted pursuant to Texas Occupations Code §301.151 which authorizes the board to adopt rules necessary for the performance of its duties.

The proposed amendment affects Texas Occupations Code §301.257.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Katherine Thomas
Executive Director
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## CHAPTER 216. CONTINUING EDUCATION

### 22 TAC §216.3

The Board of Nurse Examiners adopts without changes amendments to 22 TAC §216.3, concerning Continuing Education. The proposed amendments were published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7350).

Senate Bill 39 (79th Regular Session, 2005) amended the Nursing Practice Act (NPA) by adding §301.306, Forensic Evidence Collection Component in Continuing Education. Under the new language, a licensed nurse "employed to work in an emergency room setting" will be required to complete a minimum of 2 hours of targeted CE in forensic evidence collection not later than September 1, 2008 or the second anniversary of the initial issuance of a license under this chapter. The bill also requires that a rule be in place no later than January 1, 2006. In addition, House Bill 2680 (79th Regular Session, 2005) amended Texas Occupations Code §112.051 and requires regulatory agencies of healthcare practitioners (including the Board) to "adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care." The adopted amendments will implement these statutes.

Three comments were received: two from individuals in response to the forensic evidence continuing evidence and one from CNAP in response to the proposed amendments to the voluntary charity care amendments.

Comment from an individual: Could the BNE require more than just two hours of CE (Suggest maybe 2 hours the first year, an additional 2 hours the second year, etc.)? Also, the rule doesn't require nearly enough about documentation.

Response: Given the multitude of practice settings and procedures nurses may perform, requiring prescriptive training requirements for every task or procedure a nurse may be able to perform would be a never-ending task. Proposed rule language, 22 TAC §216.3(6), mirror-images the language in the statute (Texas Occupations Code §301.306). Both the statute and the rule mandate a "minimum" of 2-hours of continuing education in forensic evidence collection. There is nothing that would preclude a facility making more stringent CE requirements if the facility so chooses. The BNE has no jurisdiction over facilities.

The Board holds each licensed nurse accountable to comply with the Nursing Practice Act as well as Board Rules. In particular, §217.11, Standards of Nursing Practice, sets forth broad requirements for a nurse, regardless of practice setting. This rule requires a nurse to act in the client's best interest, including:

a. (1)(B) "maintain a safe environment for clients and others;"

b. (1)(G) "obtain instruction and supervision as necessary when implementing nursing procedures or practices;"

c. (1)(H) "make a reasonable effort to obtain orientation/training for competency when encountering new equipment and technology or unfamiliar care situations;"

d. (1)(R) "be responsible for one's own continuing competency in nursing practice and individual professional growth;" and

e. (1)(T) "accept only those nursing assignments that take into consideration client safety and that are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability."

With regard to broad documentation parameters of the rule: The statutes for evidence collection and documentation are contained in laws outside the jurisdiction of the BNE. The terminology "service-approved evidence collection kit and protocol" is taken directly from Chapter 420, §420.031 of the Government Code. The statutes in Chapter 420 may be viewed at the web site for the Texas Statutes (http://www.capitol.state.tx.us/statutes). Though this particular law addresses sexual assault evidence collection specifically, the term itself is generic in nature and intended to encompass evidence collection and documentation standards for any given practice situation relating to forensics, not just sexual assaults.

The Board has long maintained the position that nursing professional organizations and/or regulatory entities that focus on a specialty area of practice are far better resources for determining appropriate standards of care for a given specialty area of nursing. Given that various types of forensic evidence collection would meet rule requirements and evidence-based practice standards are always evolving are further reasons why an extensive list of prescriptive documentation requirements would not serve the best interest of protecting the public or communicating current standards of care to nurses in any given specialty area.

For example, in addition to standardized documentation required in the Sexual Assault Prevention and Crisis Services (SAPCS) Protocol, facilities providing sexual assault services to victims must also comply with other laws that involve mandatory documentation of findings and services offered to the victim for legal as well as medical purposes. As the BNE has no jurisdiction over facilities, we cannot speak to these requirements; however, the facility may be required to have policies that address specific documentation mandates that impact any nurse involved with sexual assault or other types of forensic examinations.

Comment from an individual: Many aspects of forensics exist, and not all are related to sexual assault. The California Board of Nurse Examiners allows their nurses to obtain CEUs related to all types of Forensics. In the Emergency Department (ED), gunshot wounds, motor vehicle accidents, and assaults are classified under forensics. Is the Texas forensic CEU requirement only related to sexual assault evidence collection?

Response: Proposed §216.3(6) does not limit appropriate CE to only sexual assault evidence collection. Nursing laws can and do vary from state-to-state. The Texas Legislature passes laws (Texas Occupations Code, Chapters 301, 303, and 304) that establish the requirements for nursing education and practice in Texas. The Board of Nurse Examiners must then create and/or amend Rules to implement the statutes as passed by the Legislature each biennial session; therefore, what is acceptable in California may or may not be acceptable to meet licensure requirements in Texas.

Proposed §216.3(6) specifically addresses requirements in NPA §301.306, Forensic Evidence Collection Component in Continuing Education. While Senate Bill 39 (79th Regular Session, Texas Legislature (2005)) did not include language limiting "forensic evidence collection" to only sexual assault victims, a review of the Bill analysis and history demonstrate that this was the original intent of this legislation. The Board believes the generic nature of the final bill language encompasses broader training in forensic evidence collection. Thus, nurses whose practice settings include the ED are encouraged to seek CE offerings that are relative to the types of patients seen in the nurse's clinical practice.

Comment from the Director of Public Policy for CNAP, Lynda Woolbert, regarding the voluntary charity care amendments: §216.3(7)(B)(ii) specifies that an APN licensed as a VR-RN may not have prescriptive authority. While I completely understand that many APNs licensed as a volunteer retired RN may not meet the 400 hour biannual practice requirement, there may be some who volunteer on a regular basis and easily meet this requirement. Since the purpose of House Bill 2680 was to encourage retired health care providers to use the expertise in a volunteer capacity, it seems appropriate to give APNs practicing on a VR-RN license the option of meeting more rigorous standards in order to have prescriptive authority.

CNAP understands that these rules need to be adopted by January 1, 2006...CNAP requests that a revision in this rule be proposed as soon as possible. We think it is important that APNs practicing on a VR-RN license have the option of retaining prescriptive authority if that APN meets practice and national certification standards.

Response: The Board appreciates CNAP's comments; however, other laws both within and outside of the jurisdiction of the BNE preclude permitting non-licensed practitioners from holding prescriptive authority privileges. Proposed §217.9(d) as well as §216.3(7) grant authorization to nurses who are 65 years old or older but who, rather than retaining their nursing *license*, choose instead to function in a volunteer capacity only, providing charity care in conjunction with a charitable organization as defined in §217.9(d)(5) [and as defined in §84.003 of the Texas Civil Practices and Remedies Code]. Authorization is not the same as licensure.

Section 221.4(a)(1) requires that a person possess a "valid, current, unencumbered license as a registered nurse..." in order to seek or retain authorization as an advanced practice nurse. Section 221.9(b) further states that "...the inactive advanced practice nurse may not utilize his/her limited prescriptive authority." These requirements are congruent with additional requirements in §222.5 and §222.6 relating to active licensure and advanced practice authorization requirements for prescribing either dangerous drugs or controlled substances. Laws outside of the jurisdiction of the BNE also preclude non-licensed practitioners from prescribing either dangerous or controlled substances.

As an additional clarification, APNs who have authorization as volunteer retired nurses do not have to have 400 hours of active practice per biennium, nor do they have to maintain national certification in their advanced practice role and specialty. In accordance with other Board rules, if a registered nurse with advanced practice authorization wishes to maintain full authorization to practice as well as prescriptive authority privileges, he/she must retain an active RN license, as well as active APN authorization with Prescriptive Authority, and must meet all requirements for renewal including 400 hours of practice and national certification as required by Board rule.

The amendments are adopted pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The amendments will implement Texas Occupations Code §112.051 and §301.306.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Katherine Thomas
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## CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

### 22 TAC §217.18

The Board of Nurse Examiners adopts with changes amendments to 22 TAC §217.18, concerning Licensure, Peer Assistance and Practice. The proposed amendments were published in the November 11, 2005, edition of the *Texas Register* (30 TexReg 7351). House Bill 1718 (HB1718) (2005) amended the Nursing Practice Act by repealing §§301.1525 through 301.1527 and adding §301.353. The proposed amendments to §217.18 implement HB 1718 and address the statutory requirements for a nurse whose functions include acting as a first assistant in surgery. The non-substantive changes were made to §217.18(a)(1)(C)(i), §217.18(a)(2), and §217.18(b)(2) in response to comments and Staff recommendations.

House Bill 1718 amended the Nursing Practice Act by repealing §§301.1525 through 301.1527 and adding §301.353. (Please note that there are currently two sections of the Nursing Practice Act that bear section number 301.353 one section added by SB 1000 and the other by HB 1718.) First assistant qualifications were moved to this new section. In addition, there is now a provision for currently authorized advanced practice nurses who are not certified in perioperative nursing to first assist if they complete RNFA educational programs. The section also added provisions for nurses at any level of licensure to assist under the direct supervision of and in the physical presence of a physician, dentist or podiatrist.

Two comments were received in response to that publication one from the Association of periOperative Registered Nurses (AORN) and the other from the Texas Nurses Association (TNA). Both organizations offered recommendations for non-substantive changes to the proposed rule language that would provide greater clarity for readers. The Board agrees with the proposed changes and has incorporated them into the adopted rule.

In §217.18(a)(1)(C)(i), the board clarified that CNOR is certification in perioperative nursing per TNA's request. The board recommends that this reference remain in the rule as there have been many individuals who have argued for acceptance of other certifications.

In §217.18(a)(2), the board agrees with the changes recommended by both TNA and AORN. The board is maintaining the language that requires RNFAs to be accountable for knowledge of the laws and regulations specific to first assisting to remind RNFAs that they need to be aware of regulations related to areas such as reimbursement and credentialing. The change to the advanced practice section clarifies that those advanced practice nurses who first assist based on their qualifications under subsection (a)(1)(C)(ii) must first assist on surgical cases that are within their authorized specialty area. However, there may be individuals who are qualified to first assist under §217.18(a)(1)(C)(i) that are also advanced practice nurses. In the latter situation, these individuals would be eligible to first assist in any surgical case, not just those that fall within their authorized advanced practice specialty. The alternate language clarifies that there is no intent to limit the practice of the latter group of advanced practice nurses.

The board will keep paragraph (2) under §217.18(b) as it applies only to those nurses who are assisting under the supervision of the physician. The board adopts TNA's recommendation for alternative language.

The adopted amendments of this chapter are pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorize the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

These amendments will implement Texas Occupations Code §301.353.

*§217.18. Assisting at Surgery.*

(a) Nurse First Assistants.

(1) A registered nurse who wishes to function as a first assistant (RNFA) in surgery shall meet the following requirements:

(A) Current licensure as a registered nurse in the State of Texas or a current, valid registered nurse license with a multi-state privilege in a party state;

(B) Completion of a nurse first assistant educational program approved or recognized by an organization recognized by the Board; and

(C) Is either:

*(i)* currently certified in perioperative nursing by an organization recognized by the board (CNOR certification in perioperative nursing); or

*(ii)* currently recognized by the board as an advanced practice nurse and qualified by education, training, or experience to perform the tasks involved in perioperative nursing.

(2) When collaborating with other health care providers, the RNFA shall be accountable for knowledge of the statutes and rules relating to RNFAs and function within the scope of the registered nurse. Advanced practice nurses functioning as first assistants under the authority of (a)(1)(C)(ii) of this subsection shall function within the scope of the advanced role and specialty for which they hold authorization to practice from the board.

(3) A registered nurse (including an advanced practice nurse) functioning as a first assistant in surgery shall comply with the standards set forth by the AORN.

(b) Assisting at Surgery by Other Nurses.

(1) A nurse who is not a nurse first assistant as defined in subsection (a) of this section may assist a physician, podiatrist, or dentist in the performance of surgery if the nurse:

(A) Has current licensure as a nurse in the State of Texas or a current, valid nursing license with a multi-state privilege in a party state;

(B) Assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;

(C) Is in the same sterile field as the physician, podiatrist, or dentist;

(D) Is employed by:

*(i)* the physician, podiatrist, or dentist;

*(ii)* a group to which the physician, podiatrist, or dentist belongs; or

*(iii)* a hospital licensed or owned by the state; and

(E) Is qualified by education, training, or experience to perform the tasks assigned to the nurse.

(2) A nurse assisting in the performance of surgery under this subsection shall not use:

(A) The title "nurse first assistant" or "registered nurse first assistant,"

(B) The abbreviation "R.N.F.A.," or

(C) Any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under subsection (a) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

### CHAPTER 53. FINANCE

The Texas Parks and Wildlife Commission adopts new §53.91, concerning Documented Vessels, and an amendment to §53.110, concerning Marine Dealer, Distributors, and Manufacturers, with changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6235).

The change to §53.91 alters the text of subsection (c)(3) to insert the word 'Chapter' into the reference to the Tax Code.

The change to §53.110 adds language to subsection (b) to clarify that an employee or representative of a marine dealer is not required to obtain a permit. The change also adds language to subsection (i) to acknowledge that the department will consider good-faith efforts to comply with the subchapter when contemplating the initiation of action to suspend or revoke a license. The change also eliminates proposed subsection (k), which would have prohibited the use of non-registered vessels under license to a manufacturer, dealer, or distributor to advertise or promote any entity or product other than the manufacturer of the vessel or the business for which the license was issued.

New §53.91, which prescribes the process and documentation necessary to register a new or used vessel, and the process and documentation necessary to renew a registration, is necessary to establish procedures for improved customer service by allowing the submission of pending documentation for purposes of initial registration of a vessel. The amendment allows a new owner to obtain registration for operation of a vessel on public waters while awaiting federal documentation to be processed.

The new section also creates an exception to the applicability of the rule to vessels used as tenders for direct transportation between a mother ship and the shore and provides for the marking for such vessels. This portion of the new section is necessary to provide for scenarios in which a vessel is used only as a ferry between a registered vessel and the shore. Separate vessel registration for such vessels is not necessary for the purposes of the subchapter.

The amendment to §53.110, concerning Marine Dealers, Distributors, and Manufacturers, is necessary to clarify the types of activities regulated by the subchapter and to set forth the application requirements for persons seeking to acquire a dealer's, manufacturer's, or distributor's license. Under Parks and Wildlife Code, Chapter 31, a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or outboard motors during a calendar year is a dealer and therefore required to have a license issued by the department.

The amendment is also necessary to clarify license display requirements. The current rule requires that a license be displayed at all times. The amendment as adopted makes clear that the license must be displayed at all times at the location for which the license was issued, and not at any other location.

The current rule contemplates marine dealers who maintain inventory at a showroom or other fixed place of business. However, the department has determined that there are dealers who maintain inventory on the water at various marinas and moorages. The amendment therefore adds a provision to the application requirements for a marine dealer's license to address licensure of persons who display or list vessels or outboard motors not kept at a single location, such as commission-sale brokers who at any given time may be attempting to sell vessels located on the water in different parts of the state. The amendment requires persons engaged in such types of businesses to furnish to the department the physical address of the office, the physical address, phone number, and management/ownership information for at least five marinas where vessels are expected to be moored. This portion of the amendment is necessary to ensure that the department's rules encompass the variety of business models that are affected by the requirements of Parks and

Wildlife Code, Chapter 31. The amendment also requires an applicant to provide an explanatory note if the applicant expects to keep inventory at fewer than five marinas.

The amendment as adopted also adds clarifying language to the list of documentation required to be maintained by licensees. Under current subsection (g), copies of any and all documents, forms, and agreements applicable to a particular sale are required to be retained for department inspection. The proposed amendment inserts additional language to clarify that acts such as consignment, transfer of ownership titling, titling and registration, and documentation activities are all considered to be a part of sales activities and as such the records of those activities are required to be retained. The amendment is necessary to clarify exactly what activities require a person to obtain a dealer's license.

The amendment also stipulates that an applicant must sign a license agreement with the department indicating that the person agrees to abide by all applicable statutes and regulations as a condition of license issuance. The amendment is necessary to ensure that the full range of possible activities contemplated by the legislative intent of Parks and Wildlife Code, Chapter 31, is explicitly acknowledged in the rule, and to comply with the mandates of Senate Bill 489, enacted by the 79th Texas Legislature, Regular Session, which requires licensees to enter into a license agreement with the department.

The amendment also establishes criteria and procedures for revocation and suspension of licenses. The amendment implements additional provisions of S.B. 489 that authorize the commission to adopt rules governing revocation and suspension of licenses. The amendment is necessary to protect the public, and the boating public in particular, by creating a mechanism for the department to prevent persons who have not met the appropriate standards from operating a business regulated by the department. The rule provides for notice and hearing when the department determines that a license should be revoked or suspended. The provisions are necessary to provide a fair opportunity to be heard to those who may lose their license, and are necessary to meet due process requirements.

New §53.91, will function by prescribing the process and documentation necessary to register a new or used vessel and the process and documentation necessary to renew a registration.

The amendment to §53.110, concerning Marine Dealers, Distributors, and Manufacturers, will function by delineating the types of activities regulated by the subchapter, setting forth the application requirements for persons seeking to acquire a dealer's, manufacturer's, or distributor's license, prescribing license display requirements, establishing documentation requirements, and providing a mechanism for the revocation and suspension of licenses.

The department received three comments concerning adoption of the rules.

One commenter requested that language be added to clarify that an employee or representative of a marine dealer is not required to obtain a permit, provided the employer has obtained a permit. The department agrees with the comment and has made the change accordingly.

One commenter requested that the department consider good-faith efforts to comply with the subchapter when contemplating the initiation of action to suspend or revoke a permit. The department agrees with the comment and has made the change accordingly.

One commenter opposed adoption of the proposed provision to prohibit the use of non-registered vessels under license to a manufacturer, dealer, or distributor to advertise or promote any entity or product other than the manufacturer of the vessel or the business for which the license was issued. The commenter did not elaborate. The department agrees with the comment and has made the change accordingly.

The Gulf Coast Yacht Brokers and the Boating Trades Association of Texas commented in support of the rules as adopted.

## SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

### 31 TAC §53.91

The amendment and new section are adopted under the authority of Senate Bill 489, 79th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, Chapter 31, to authorize the commission to prescribe license requirements and establish license revocation and suspension procedures, and Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

*§53.91. Documented Vessels.*

(a) New vessels that have applied for documentation may acquire a certificate of number and validation decal at any TPWD boat registration office. At the time of application, applicants must present:

(1) a properly completed registration application on a form supplied by the department;

(2) a copy of:

(A) the current documentation from the U. S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the applicant's name; or

(B) the application for initial documentation with the USCGNVDC in the applicant's name;

(3) payment of any tax required under Tax Code, Chapter 160, or verification of payment; and

(4) payment of the appropriate registration fee as required by Parks and Wildlife Code, §31.026, and §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).

(b) Used or previously documented vessels may acquire a certificate of number and validation decal at any TPWD boat registration office. At the time of application, applicants must present:

(1) a properly completed registration application on a form supplied by the department;

(2) a copy of:

(A) the current documentation from the U. S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the previous owner's name, or the applicant's name; or

(B) the lapsed documentation from the USCGNVDC or their website in the previous owner's name and the application for current documentation with the USCGNVDC in the applicant's name;

(3) payment of any tax required under Tax Code, Chapter 160, or verification of payment; and

(4) payment of the appropriate registration fee as required by Parks and Wildlife Code, §31.026, and §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).

(c) Renewal of certificate of number and validation decal for a documented vessel may be acquired at any TPWD boat registration office. At the time of application, applicants must present:

(1) a properly completed registration application or renewal notice on a form supplied by the department, or a hand written request;

(2) a copy of the current documentation from the U.S. Coast Guard National Vessel Documentation Center (USCGNVDC) or their website in the current owner's name;

(3) for vessels greater than 65 feet in length for the first registration renewal, verification of payment under Tax Code, Chapter 151, or verification from the TPWD boat system; and

(4) payment of the appropriate registration fee as required by §53.16 of this title (relating to Vessel, Motor, and Marine Licensing Fees).

(d) A vessel used as a tender for direct transportation between a mother ship and the shore is not required to display a validation decal, provided:

(1) the vessel is equipped with propulsion machinery of less than 10 horsepower;

(2) is owned by the owner of a vessel for which a valid certificate of number has been issued and displays the registration number of that vessel followed by the suffix "1" (i.e. TX-1234-AB-1) in the manner specified by Parks and Wildlife Code, §31.031; and

(3) is used for no purpose other than direct transportation between a mother ship and the shore.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER G. MARINE DEALERS, DISTRIBUTORS, AND MANUFACTURERS

### 31 TAC §53.110

The amendment is adopted under the authority of Senate Bill 489, 79th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, Chapter 31, to authorize the commission to prescribe license requirements and establish license revocation and suspension procedures, and Parks and Wildlife Code, §31.0412, which authorizes the commission to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

*§53.110. Marine Dealer, Distributors, and Manufacturers.*

(a) The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Consignment--The sale or offer for sale by a person other than the owner under terms of a verbal or written authorization from the owner.

(b) Any person or entity, including a person or entity purporting to be a broker or brokerage house, who acts as an intermediary or assists in the sale, sale on consignment, display for sale, purchase, trade, or transfer of a vessel, motorboat, or outboard motor in exchange for a fee, commission, or other consideration is considered to be engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging a vessel for the purposes of this subchapter. Any person or entity, including a person or entity purporting to be a broker or brokerage house, engaged in any activity described above is subject to the provisions of this subchapter.

(c) A person shall apply for a license as a dealer by submitting a properly completed, department-approved application form, accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) photographs clearly showing:

(A) the permanent sign at the location designated in the application as the applicant's permanent place of business, clearly indicating the name of the business;

(B) the front of the business with public access; and

(C) space sufficient for office, service area (not applicable to floating inventory or listings), and display of vessels, motorboats, or outboard motors (not applicable to floating inventory or listings);

(3) a copy of the Tax Permit issued by the Comptroller under Chapter 151, Tax Code;

(4) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(5) a photocopy of the current driver's license or Department of Public Safety identification of the owner, president or managing partner of the business; and

(6) a list of dealer agreements; and

(7) if the applicant is to maintain floating inventory or listings at a location other than that designated as the applicant's permanent place of business, a record of at least five marinas where floating inventory or listings are expected to be displayed. If the applicant contemplates using less than five marinas, then the application shall include an explanatory statement. The record must identify, at a minimum, the name, physical address, and telephone for each marina.

(d) A person shall apply for a license as a distributor or manufacturer by submitting a properly completed, department-approved application form accompanied by the following:

(1) the fee prescribed by law for each license requested;

(2) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(3) a complete list of manufacturers represented by a distributorship; and

(4) a complete list of distributors, dealers, and manufacturers.

(e) The department may issue a license under this subchapter if:

(1) the applicant submits a complete application form and required attachments; and

(2) the applicant signs a department-provided license agreement stating that the applicant agrees to comply with all applicable state laws, including Occupation Code, Chapter 2352, concerning Franchise Agreements, when required.

(f) A license holder shall notify the department in writing within 10 days if there is any change of:

(1) ownership;

(2) business name;

(3) physical location;

(4) dealer agreement;

(5) distributors, dealers, or representatives; or

(6) address or phone information.

(g) The licenses issued under this subchapter to dealers must be publicly displayed at all times in the place of business for which the license is issued.

(h) A license holder must keep a complete record available for inspection in the place of business relating to all vessels, motorboats, and outboard motors purchased, sold, or displayed for sale for a minimum of 24 months. Content of records must include the:

(1) date of purchase;

(2) date of sale;

(3) hull identification number and/or motor identification number;

(4) name and address of person selling to the dealer;

(5) name and address of person purchasing from the dealer;

(6) name and address of selling dealer or individual if vessel and/or outboard motor is offered for sale by consignment;

(7) a copy of the vessel/outboard motor title/registration receipt;

(8) copies of any and all documents, forms, and agreements applicable to a particular sale, consignment, listing, transfer of ownership, titling, titling and registration, or documentation through the U.S. Coast Guard, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of the front and back of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser; and

(9) copies of written consignment agreements or power of attorney for vessels, motorboats, or outboard motors.

(i) The department may suspend or revoke a license under this subchapter if:

(1) the licensee has been finally convicted or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;

(2) the licensee has violated Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;

(3) the licensee made a false or misleading statement in connection with the original or renewal application for the license, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;

(4) the licensee is indebted to the state for taxes, fees, or payment of penalties imposed by Parks and Wildlife Code, Chapter 31, or a rule adopted under that chapter;

(5) the applicant or licensee was previously the holder of a license issued under this subchapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled;

(6) the applicant or licensee was previously a partner, stockholder, director, or officer controlling or managing a partnership, corporation, or store location whose license issued under this subsection was revoked for cause and never reissued, or was suspended for cause and the terms of the suspension have not been fulfilled;

(7) the business does not intend to be open to all members of the public nor during normal business hours;

(8) the licensee or an employee of the licensee has obtained, or attempted to obtain, any money, commission, fee, barter, exchange or other compensation by fraud, deception or misrepresentation; or

(9) the licensee or an employee of the licensee is finally convicted or receives deferred adjudication for a violation of any federal or state law relating to the sale, distribution, financing, registration, taxing, or insuring of a vessel.

(j) Provisions governing the revocation or suspension of a license are as follows.

(1) Before suspending or revoking a license under this subchapter, the staff of the executive director of the department (executive director) shall provide notice by certified mail to the licensee's last known address of the department's intent to revoke or suspend the license. Within 30 days of the date of the letter, the licensee may request an administrative hearing. The hearing request must be in writing and addressed to: Manager of Boat Titling, Registration, and Marine Licensing, Texas Parks and Wildlife Department, 4200 Smith School Rd., Austin, TX 78744. For a hearing request to be valid, the department must receive the hearing request within 30 days of the date of the letter notifying the licensee of the department's intent to revoke or suspend the license. If no hearing request is received within this time frame, the executive director shall make a final decision whether to revoke or suspend the license.

(2) Timely hearing requests shall be referred by the department to the State Office of Administrative Hearings (SOAH) for adjudication.

(3) The department shall provide notice of the hearing date to the licensee by certified mail at the licensee's last known address at least ten days prior to the hearing date.

(4) The licensee shall be responsible for all hearing costs to SOAH, including but not limited to transcript and court reporting costs incurred by the department. Prior to the beginning of the hearing, at the request of department, the SOAH judge shall require the licensee to post a bond in an amount set by the SOAH judge, payable to the department and conditioned on prompt payment of hearing costs. Failure to post the requested bond prior to the start of the hearing shall result in default by the licensee.

(5) The failure of the licensee to appear at the hearing shall entitle the department's staff to request issuance of a default proposal for decision or order by the judge.

(6) At the conclusion of the hearing, SOAH shall prepare a proposal for decision in accordance with SOAH rules. The proposal for decision shall be submitted to the department's deputy executive director for administration, who will make the final decision on whether to revoke or suspend the license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 30, 2006.

TRD-200600463
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: February 19, 2006
Proposal publication date: September 30, 2005
For further information, please call: (512) 389-4775

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# PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

## CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

**31 TAC §523.7**

The Texas State Soil and Water Conservation Board (State Board) adopts amendments to 31 TAC §523.7, concerning identifying the geographic area in which the program is available; which eliminates specified incentive payments and establishes a method for the State Board to set incentive payments consistent with available appropriated funds and bases incentive payments on weight rather than volume; revising the language to allow the State Board to contract with a designated agent to administer the program rather than limit contracts to a local soil and water conservation district; and changes the language to specify that eligible haulers must participate in a workshop covering proper procedures for reimbursement payments rather than acceptable methods of hauling animal wastes. Section 523.7 is adopted with changes to the proposed text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8419). A minor grammatical change is being made to subsection (i). The text of the rule will be republished.

This amended rule adoption identifies the geographic area where the program is available; eliminates specific incentive payments and establishes a means for the State Board to set incentive payments consistent with appropriated funds and bases incentive payments on weight hauled rather than volume; revises language to allow the State Board contract with a designated agent rather than limit contracts to a local soil and water conservation district; and changes language to specify that eligible haulers must participate in a workshop covering proper procedures for reimbursement payments rather than acceptable methods of hauling animal wastes.

The adopted rule will inform everyone of the geographic area where the program is being administered; establish authority for the State Board to set incentive payments on weight hauled consistent with appropriations; give the State Board flexibility in contracting with the best available agent in the area; and establishes training criteria for haulers of animal waste.

No comments were received regarding the adoption of this rule.

The amended rule is adopted under the Agriculture Code , Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

*§523.7. Incentives for Composting Animal Manure.*

(a) Purpose. The purpose of this program is to expand the efforts and activities of the Texas State Soil and Water Conservation Board (State Board) and local Soil and Water Conservation Districts (SWCD/District) in the reduction of Nonpoint Source Pollution loadings in watersheds impacted by nutrients from agricultural activities. This program will promote the hauling of excess manure from animal feeding operations located in the North and Upper North Bosque River (Segments 1226 and 1255) and Leon River (Segments 1221 and 1223) Watersheds to certified compost facilities instead of application to land off-site of the facility and in the impacted watersheds.

(b) Reimbursement Payment. In watershed areas specified by the State Board, expenses for hauling manure, consistent with all provisions in this section (§523.7 Incentives for Composting Animal Manure), to compost facilities certified by the Texas Commission on Environmental Quality (TCEQ) and approved by the State Board, will be paid by the State Board according to reimbursement rates established under subsection (c) of this section, Reimbursement Rates.

(c) Reimbursement Rates. Reimbursement rates shall be established by the State Board on a ton per mile rate based on the conditions in the watersheds.

(d) Reimbursement Procedures. Reimbursement for specified hauling expenses will be paid directly to the hauler, upon submittal of expenses on reimbursement forms, approved by the State Board, to the State Board designated agent in the watershed, and upon necessary processing by the State Board and submission to the State Comptroller for payment.

(e) Reimbursement Forms. Reimbursement forms will be issued by the State Board and will be available, upon request from the designated agent of the State Board, in the watershed.

(f) Required Signatures. Reimbursement forms will provide for and require the following signatures:

(1) The owner/operator or the designated agent of the Animal Feeding Operation (AFO) from which the load originates, certifying the location, date and weight of the load leaving the AFO.

(2) The owner/operator or the designated agent of the certified compost facility where the load is delivered, certifying delivery, location, date and weight received.

(3) The hauler, certifying delivery date, weight and mileage.

(g) Rejected Goods. The State Board will not reimburse hauling expenses for loads not accepted by a certified compost facility. It is the responsibility of the AFO owner/operator or the designated agent to arrange for acceptance by the compost facility prior to initiating delivery.

(h) Assistance. The owner/operator or the designated agent of an AFO may obtain assistance in locating haulers and certified compost facilities by contacting the designated agent of the State Board in the watershed.

(i) Eligible Haulers. In order to be eligible for reimbursement payments, haulers must participate in a workshop conducted by the State Board designated agent covering proper procedures for reimbursement payments. Reimbursement will not be paid for loads invoiced not consistent with State Board approved procedures.

(j) Designated Agent of the State Board. The State Board designated agent will be responsible for the day-to-day activities of the project in the watershed. The State Board designated agent may employ or contract with a person or entity to carry out this responsibility. The location and telephone number of the designated agent will be available from the State Board office in Temple.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2006.

TRD-200600375
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: February 13, 2006
Proposal publication date: December 16, 2005
For further information, please call: (254) 773-2250 x252

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER O. STATE SALES AND USE TAX

**34 TAC §3.337**

The Comptroller of Public Accounts adopts the repeal of existing §3.337, concerning gratuities without changes to the proposal as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7382).

The existing §3.337 is being repealed so that the content can be updated in a new section §3.337 to incorporate policy clarifications regarding the requirements to exclude mandatory gratuities from the sales price of taxable items and the record-keeping requirements in relation thereto, as well as to update definitions of relevant terms.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code §151.007(c)(7).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600455
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: February 16, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 475-0387

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**34 TAC §3.337**

The Comptroller of Public Accounts adopts new §3.337, concerning gratuities without changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7382).

The new section replaces the existing §3.337, which is being repealed so that the content is updated to reflect policy clarifications regarding the requirements to exclude mandatory gratuities from the sales price of taxable items and the record-keeping requirements in relation thereto, as well as to update definitions of relevant terms.

Qualified employees who perform services upon which gratuities are charged are defined in subsection (a)(2), and the total direct compensation such employees receive is defined in subsection (a)(4).

The requirements for mandatory gratuities that are and are not subject to sales tax are identified in subsection (c).

Record-keeping requirements for mandatory gratuities disbursed to employees are identified in subsection (d).

In addition to these policy clarifications, the new section has other changes in form, style, and wording to help taxpayers understand when to collect tax on gratuities. These changes are for the purpose of clarity.

No comments were received regarding adoption of the new section.

The new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code §151.007(c)(7).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600456
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: February 16, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 475-0387

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## CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

## SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

**34 TAC §5.39**

The Comptroller of Public Accounts adopts amendments to §5.39, concerning hazardous duty pay, without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8642).

The purpose of the amendments is to conform §5.39 with the hazardous duty pay increase that was enacted into law during the 79th regular session of the legislature. §13.06 of Senate Bill 1863 increased the monthly amount of hazardous duty pay to $10 for each 12-month period of lifetime service credit, not to exceed $300. The increase necessitates these amendments to subsections (c)(1)(B), (f)(3)(A), (f)(3)(C), and (f)(5) of §5.39.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L. Subchapter L governs hazardous duty pay.

The amendments implement Government Code, Chapter 659, Subchapter L.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

TRD-200600457
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: February 16, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 475-0387

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# TITLE 40. SOCIAL SERVICES AND ASSISTANCE

# PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

## CHAPTER 720. 24-HOUR CARE LICENSING

## SUBCHAPTER O. GENERAL POLICIES AND PROCEDURES

**40 TAC §§720.1003, 720.1007, 720.1012**

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§720.1003, 720.1007, and 720.1012, in its 24-Hour Care Licensing chapter. The amendment to §720.1003 is adopted with changes to the proposed text published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7394). The amendments to §720.1007 and §720.1012 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to revise policies concerning the use of restraint and seclusion in certain facilities, as required by Senate Bill 325 of the 79th Legislature, Regular Session.

The amendment to §720.1003 adds a requirement that the behavior intervention policies of the facility must be shared with the parent or managing conservator at the time of admission and prohibits a child-care facility and/or child-placing agency from discharging or retaliating against (1) a person who presents information relating to the misuse of restraint or seclusion at the facility; or (2) a client or resident of the facility because someone on behalf of this person presents information relating to the misuse of restraint or seclusion at the facility.

The amendment to §720.1007: (1) permits a prone or supine hold to only be used as a transitional hold; (2) clarifies the appropriate action to take when a child indicates that he cannot breathe; (3) prohibits personal restraints that put pressure on a child's torso, obstruct a child's breathing, and interfere with a child's ability to communicate; (4) specifies when a person qualified in behavior intervention can use a prone or supine hold; (5) clarifies the maximum time limits for other personal restraints; and (6) adds that documentation of personal restraint must include when a prone or supine restraint is used.

The amendment to §720.1012 adds that the risks associated with the use of prone or supine holds must be included as a pre-service training component.

The amendments will function by enhancing the protection of children and improving the quality of care of children.

During the public comment period, DFPS received comments from Advocacy, Inc. and Homes 4 Good Child-Placing Agency. A summary of the comments and responses follows:

Comment concerning §720.1003(g): One commenter was strongly opposed to having behavior interventions posted in foster family homes. Reviewing the information with the child and providing a copy to the child, managing conservator, and family, as well as these individuals signing that the information is received and reviewed is adequate. Posting the information feels like an institutional requirement and does not provide children with a sense of normality.

Response: DFPS agrees with the commenter, and is adopting this section with a change to allow an option to post behavior interventions or provide a copy of the behavior intervention policies. The rule will say "The child-care facility must post the behavior interventions allowed in the child-care facility in a place where the children/clients can view them, or at admission, must provide each child and the child's parent or managing conservator with a personal copy of the facility's behavior intervention policies."

Comments concerning §720.1007(c)(3)(A)(iii): (1) One commenter stated that if the risk of prone restraint is as great as indicated, she does not see what facility size has to do with assuring the safety of the children in care. The commenter recognizes that smaller facilities may have limited numbers of staff either to supervise the other clients or to observe the restraint, but this would seem to make this situation even more problematic by allowing facilities with a capacity of 50 or fewer

children to be exempt from meeting the requirement for an observer.

Response: Senate Bill 325 of the 79th Legislature, Regular Session, exempts "small facilities" from meeting the requirements for having an observer during the implementation of a prone or supine hold of a child. "Small facilities" was not defined in statute and was defined by DFPS as facilities with a capacity of 50 or fewer children. DFPS is not incorporating this comment.

(2) One commenter stated that the legislative intent was to define small facilities as 16 beds or less, rather than facilities with a capacity of 50 or fewer children as proposed by DFPS.

Response: Senate Bill 325 did not define "small facilities" exempt from meeting the requirements for an observer. To define small facilities as having 16 beds or less would be a substantive change to the proposed rule, and would require the rule to be republished for public comment. Staff agree to do further research on defining "small facilities" and the potential impact to all child-care operations; however, at this time, DFPS is not incorporating this comment into this rule.

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendments implement the Health and Safety Code, Chapter 322, as amended and added by Senate Bill 6, 79th Legislature, Regular Session.

*§720.1003. Required Behavior Intervention Policies and Procedures.*

(a) All child-care facilities and child-placing agencies must have policies and procedures consistent with §§720.1001 through 720.1013 of this title (relating to Definitions, Behavior Intervention Precedence, Required Behavior Intervention Policies and Procedures, Less Restrictive Behavior Interventions, Restraint and Seclusion: General Requirements, Emergency Medication, Personal Restraint, Mechanical Restraint, Protective Devices, Supportive Devices, Seclusion, Behavior Intervention Training, and Evaluation of Behavior Interventions) addressing behavior interventions.

(b) These policies and procedures must include a complete description of permitted behavior interventions.

(c) The child-care facility and/or child-placing agency must set, in its behavior intervention policies, the specific intervention techniques that will be used within the parameters set by minimum standards.

(d) The facility's behavior intervention procedures must include all child-care facility and/or child-placing agency requirements for and restrictions on the use of permitted interventions.

(e) The facility must notify the Department of Family and Protective Services of any changes to these policies and procedures before implementation of the changes.

(f) The child-care facility and/or child-placing agency must follow its written behavior intervention policies and procedures.

(g) The child-care facility must post the behavior interventions allowed in the child-care facility in a place where the children/clients can view them, or at admission, must provide each child and the child's parent or managing conservator with a personal copy of the facility's behavior intervention policies.

(h) Prior to or at admission, a caregiver must explain to children, based on their level of functioning and comprehension, the child-care facility's policies and practices on the use of restraint. The explanation must include who can use a restraint, the actions caregivers must first attempt to defuse the situation and avoid the use of restraint, the kinds of situations in which restraint may be used, the types of restraints authorized by the agency under which the home operates, when the use of a restraint must cease, what action the child must exhibit to be released from the restraint, and the way to report an inappropriate restraint. This explanation must be documented in the child's record.

(i) Prior to or at admission, children must be notified, based on their level of functioning and comprehension, of their right to voluntarily provide comments on any restraint or seclusion, including the incident that led to the restraint/seclusion and the manner in which staff intervened, in which they are the subject or to which they are a witness. This notification must include an explanation of the process for submitting such comments, which must be easily understood and accessible. This notification need not be made after every restraint and seclusion that occurs at the facility as long as the process for submitting such comments has been made clear and accessible. For example, a facility could create a standardized form that is easily accessible or give children the permission to submit such comments on regular paper to any staff person.

(j) A child-care facility and/or child-placing agency may not discharge or otherwise retaliate against:

(1) An employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(2) A client or resident of the facility because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600415
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 438-3437

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## CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.37, 745.129, and 745.8407; and new §§745.4201, 745.4203, 745.4205, 745.8421, and 745.8423, without changes to the proposed text as published in the

November 11, 2005, issue of the *Texas Register* (30 TexReg 7396).

The justification for the amendments and new sections is to implement legislation passed by the 79th Legislature, Regular Session, 2005.

The amendment to §745.37 adds the word "regular" to the definition of registered child-care home to clarify that the care must be regular for a child day care home to be subject to regulation. Also, the minimum age for admission into a therapeutic camp is updated to 13 to correspond with §720.553.

The amendment to §745.129, paragraph (4) is a new exemption created as a result of the Child Protective Services Relative and Other Designated Caregiver Program.

New §§745.4201, 745.4203, and 745.4205 address operations taking a child into care from law enforcement. Section 745.4201 states that only licensed emergency shelters, and licensed child-placing agencies authorized by Licensing may take possession of a child from law enforcement. Section 745.4203 states the child-placing agency must be authorized by DFPS to take possession of a child from law enforcement. Section 745.4205 states the child-care operation must immediately notify DFPS when taking possession of a child, with the help of law enforcement complete a form with the appropriate information, and provide the completed form to the investigator who responds to the call.

The amendment to §745.8407 allows DFPS to conduct random sampling to monitor agency foster homes and foster group homes.

New §745.8421 limits the number of anonymous complaints investigated by DFPS, and new §745.8423 states DFPS will not post the results of anonymous complaints that have no factual basis on DFPS's website.

The amendments and new sections will function by enhancing the protection of children and improving the quality of care of children.

During the public comment period, DFPS received comments from five individuals. A summary of the comments and responses follows:

Comment concerning §745.37: One commenter asked if Licensing had a definition of "regular" as it applies to a registered child-care home. The commenter also asked if taking care of two children on different days of the week, rather than every day, is considered regular.

Response: The definition of "regular care" for registered child-care homes is defined in the Human Resources Code, §42.002(17). It states that, "regular care means care that is provided at least four hours a day, three or more days a week, for more than nine consecutive weeks." When reviewing a home to determine if the home is subject to registration, regular care must be provided for four or more children, excluding children who are related to the caregiver, ages birth through 13 years. The children do not have to be present at the same time. DFPS is adopting this section without change.

Comment concerning §745.8407: No comments were received regarding the proposed rule change. However, one commenter was concerned that listed homes are not routinely inspected and suggested these homes become licensed instead.

Response: No changes were proposed regarding listed homes. DFPS does not have statutory authority to require these homes be registered or licensed, or to inspect listed homes unless there is a complaint of abuse or neglect. DFPS is adopting this section without change.

Comments concerning §745.8421: Two commenters agreed with the proposed rule change.

Response: DFPS is adopting this section without change.

Comment concerning §745.8423: One commenter agreed with the proposed rule change and believes the change will reduce the number of bogus complaints received.

Response: DFPS is adopting this section without change.

## SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

### 40 TAC §745.37

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the HRC §42.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600416
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 438-3437

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## SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
## DIVISION 2. EXEMPTIONS FROM REGULATION

### 40 TAC §745.129

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services;

HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the Family Code, Chapter 264, as amended by §1.62 of Senate Bill 6, 79th Legislature, Regular Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600417
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 438-3437

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## SUBCHAPTER H. RESIDENTIAL CHILD-CARE MINIMUM STANDARDS
## DIVISION 7. TAKING POSSESSION OF A CHILD THROUGH LAW ENFORCEMENT OR A JUVENILE PROBATION OFFICER

**40 TAC §§745.4201, 745.4203, 745.4205**

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The new sections implement the Family Code, §262.1041, as added by House Bill 798 and Senate Bill 6, 79th Legislature, Regular Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600418
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2006
Proposal publication date: November 11, 2005
For further information, please call: (512) 438-3437

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## SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
## DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

**40 TAC §§745.8407, 745.8421, 745.8423**

The amendment and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment and new sections implement the Human Resources Code, §42.042 and §42.044, as amended by House Bill 877 and §1.96 of Senate Bill 6, 79th Legislature, Regular Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2006.

TRD-200600419
Gerry Williams
General Counsel
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For further information, please call: (512) 438-3437

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# CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS
## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
## DIVISION 3. REQUIRED POSTINGS

**40 TAC §746.401**

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §746.401, with changes to the proposed text

published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7399).

The justification for the amendment is to require child-care centers to post a list of current employees, as required by Senate Bill 565, 79th Legislature, Regular Session.

The amendment will function by enhancing the protection of children and improving the quality of care of children.

During the public comment period, DFPS received comments from six individuals. One commenter was not clear how posting a list of employee's names enhances the protection of children or quality of care. The same commenter felt posting the first and last name makes the home address and phone number of the employee more readily accessible to parents and others and is an infringement on the privacy of the teacher. A second commenter expressed concern that employee information would be accessible to persons other than parents. Two commenters stated the required posting is a violation of the employees' privacy. Two commenters questioned the specific size of the paper and whether it would exclude the use of a picture frame or dry erase board. Two of the commenters suggested the list be provided upon request rather than posted. Posting a list of all current employees, and developing rules on the size and contents of the posting are requirements of Human Resources Code, §42.0551. Including the first and last name clearly identifies each employee. In response to commenters' concerns regarding the size of the posting, DFPS is revising paragraph (9) to say the list must be "at least 8 1/2 inches by 11 inches in size, printed legibly."

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the HRC, §42.0551, as amended by Senate Bill 565, 79th Legislature, Regular Session.

*§746.401. What items must I post at my child-care center at all times?*

You must post the following items:

(1) The child-care center's license;

(2) The letter or form from the most recent Licensing inspection or investigation;

(3) The Licensing notice *Keeping Children Safe*;

(4) Emergency and evacuation relocation plans;

(5) The activity plan for each group of children in the child-care center;

(6) The daily menu, including all snacks and meals served by the child-care center;

(7) Licensing *Notice of Availability for Review* of:

(A) The most recent fire inspection report;

(B) The most recent sanitation inspection report;

(C) The most recent gas inspection report, if applicable; and

(D) The Licensing minimum standards applicable for child-care centers;

(8) Telephone numbers specified in §746.405 of this title (relating to What telephone numbers must I post and where must I post them?);

(9) A list entitled "Current Employees." The list must be at least 8 1/2 inches by 11 inches in size, printed legibly, and must include each employee's first and last name; and

(10) Any other Licensing notices with specific instructions to post the notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

## SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

## DIVISION 3. REQUIRED POSTINGS

**40 TAC §747.401**

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §747.401, with changes to the proposed text published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7399).

The justification for the amendment is to require child-care homes to post a list of current employees, as required by Senate Bill 565, 79th Legislature, Regular Session.

The amendment will function by enhancing the protection of children and improving the quality of care of children.

During the public comment period, DFPS received comments from six commenters. Five commenters opposed posting the name of employees in the caregiver's home. Two of the five commenters were not clear how posting a list of employee's names enhances the protection of children or quality of care. Five of the six commenters recommended "employee" be defined, and expressed concern a posting would be required even if the caregiver has no employees. Posting a list of all current employees is a requirement of Human Resources Code, §42.0551. "Employee" is currently defined in §745.21(16) of this title (relating to What do the following word and terms mean when used in this chapter?). In this definition, a permit holder (primary caregiver)

is not considered an employee; therefore, the permit holder's name would not be included on the posted list. However, substitute and assistant caregivers are considered to be employees. In response to commenters' concerns, DFPS is revising paragraph (5) to require the posting of "a list of your current employees as defined in §745.21(16) of this title." The list must be printed on paper at least 8 1/2 inches by 11 inches in size and must include each employee's first and last name.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the HRC, §42.0551, as amended by Senate Bill 565, 79th Legislature, Regular Session.

*§747.401. What items must I post at my child-care home during hours of operation?*

You must post the following in a prominent and publicly accessible place where parents and others may easily view them during all hours of operation:

(1) The child-care home's license or registration certificate;

(2) The letter or form from the most recent Licensing inspection or investigation;

(3) The Licensing notice *Keeping Children Safe*;

(4) Telephone numbers specified in this division;

(5) A list of your employees, as defined in §745.21(16) of this title (relating to What do the following word and terms mean when used in this chapter?). The list must be printed on paper at least 8 1/2 inches by 11 inches in size and must include each employee's first and last name; and

(6) Any other Licensing notices requiring posting.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 8. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Transportation (department) adopts new Chapter 8, Motor Vehicle Distribution, Subchapter A, General Provisions, §§8.1 - 8.6; Subchapter B, Adjudicative Practice and Procedure, §§8.21 - 8.58; Subchapter C, Licenses, Generally, §§8.81 - 8.86, Subchapter D, Franchised Dealers, Manufacturers, Distributors, Converters, and Representatives, §§8.101 - 8.114; Subchapter E, General Distinguishing Numbers, §§8.131 - 8.148, Subchapter F, Lessors and Lease Facilitators, §§8.171 - 8.181; Subchapter G, Warranty Performance Obligations, §§8.201 - 8.210; and Subchapter H, Advertising, §§8.241 - 8.271. Sections 8.138, 8.141, 8.146, 8.147, 8.175, 8.208, 8.245, 8.247, 8.248, and 8.254 are adopted with changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6650). Sections 8.1 - 8.6, 8.21 - 8.58, 8.81 - 8.86, 8.101 - 8.114, 8.131 - 8.137, 8.139, 8.140, 8.142 - 8.145, 8.148, 8.171 - 8.174, 8.176 - 8.181, 8.201 - 8.207, 8.209, 8.210, and 8.241 - 8.244, 8.246, 8.249 - 8.253, and 8.255 - 8.271 are adopted without changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6650) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

House Bill 2702, 79th Legislature, Regular Session, 2005, dissolved the Motor Vehicle Board (board) and transferred its rulemaking responsibilities to the Texas Transportation Commission (commission). Therefore it is necessary to repeal Title 16, Part 6, and simultaneously adopt new sections under Title 43 to reflect the new delegation of duties and to transfer the rules to the appropriate title. Overall changes from Title 16, Part 6 correct statutory cites and grammar, and reflect the new delegation of duties to the director.

In addition, HB 988 and HB 2495, 79th Legislature, Regular Session, 2005, require revisions to current rules regarding the vehicle registration and title application process. HB 988 amends Transportation Code, §501.0234, to state that the dealer has a reasonable time to apply for the vehicle title upon the sale of a vehicle. HB 2495 allows a dealer to sell a vehicle at auction prior to taking assignment of title. The rules are revised to address these changes.

Further, the new rules include changes to the temporary tag design format. This revision is adopted to increase the security of the tag and require dealers to maintain accessible records. Rules are also adopted to allow manufacturers and distributors to sell used vehicles to dealers at wholesale auctions without requiring a general distinguishing number. The new rules delete the requirement that corporations provide verification of payment of franchise taxes prior to obtaining a license.

Subchapter A, General Provisions.

Existing Title 16, Part 6, Chapter 101, Subchapter A, §§101.2 - 101.4 and §101.28, containing general provisions describing the scope of the chapter is transferred to Title 43, Chapter 8, Subchapter A, with the following additions. New §8.1, Objective, sets out the purpose and parameters for regulating motor vehicle distribution. New §8.3, Duties and Powers of Director, describes the powers and duties of the director of the Motor Vehicle Division (division).

Subchapter B, Adjudicative Practice and Procedure.

Existing Title 16, Part 6, Chapter 101, Subchapter C, relating to management of contested cases before the division, is transferred to Title 43, Chapter 8, Subchapter B. There are no significant amendments to this subchapter.

Subchapter C, Licenses, Generally.

Existing Title 16, Part 6, §§103.10, 103.11, 103.15, 103.16 and 111.19, relating to all licensees, are transferred to Title 43, Chapter 8, Subchapter C, with the following addition. New §8.81, Objective, states that the purpose of Subchapter C is to implement the intent of the legislature as declared in Occupations Code, Chapter 2301, and Transportation Code, Chapter 503.

Subchapter D, Franchised Dealers, Manufacturers, Distributors and Converters.

The portions of Title 16, Part 6, Chapter 103, relating to licensing franchised dealers, manufacturers, distributors, and converters, protest requirements and motor home shows is transferred to Title 43, Chapter 8, Subchapter D, with the following addition. New §8.101, Objective, states that the purpose of Subchapter D is to implement Occupations Code, Chapter 2301.

New §8.114, Sales of Vehicles by Manufacturer/Distributor at Wholesale Auction, will allow manufacturers, distributors, and their wholly-owned subsidiaries to sell used vehicles that are assigned to them, to dealers through wholesale auctions. Additionally, the new rule provides for the cancellation of all retail and wholesale general distinguishing numbers held by manufacturers and distributors when the rule becomes effective, except where otherwise allowed under Occupations Code, Chapter 2301 (the Code).

Occupations Code, §2301.476(c) was adopted by the Texas Legislature during its 76th session, and codified during the 77th legislative session. By its terms, it prohibits manufacturers and distributors from owning an interest in a motor vehicle dealership, operating or controlling a dealership, or acting in the capacity of a dealer, thereby prohibiting these licensees from holding general distinguishing numbers.

It is the business of manufacturers and distributors to put vehicles into the stream of commerce by selling them to dealers. This activity, by means of wholesale transactions to dealers, is not considered to be acting in the capacity of a dealer. Wholesale auctions have required any person who buys or sells vehicles at wholesale auction to have a general distinguishing number. The practice of allowing manufacturers to dispose of vehicles acquired from lease returns and other such programs at wholesale auction is a necessary and important way for dealers to acquire a supply of this category of vehicle in an efficient and cost-effective manner that provides potential benefits to the public. Off-lease vehicles are often a source of certified used vehicles that can be purchased by consumers at a reasonable price with extended warranties.

New §8.114 permits manufacturers and distributors to sell used vehicles at a licensed wholesale motor vehicle auction without a general distinguishing number, provided that such vehicles are properly assigned into the appropriate entity's name, whether it is the manufacturer, distributor, or wholly-owned subsidiary. Since it is unlawful and upon adoption of §8.114, unnecessary in most cases for manufacturers and distributors to possess general distinguishing numbers, the new rule also provides for the cancellation of those general distinguishing numbers. It should be noted, however, that the Code does allow manufacturers and distributors to own interests in dealerships, or entities that hold general distinguishing numbers, under certain limited circumstances enumerated in Occupations Code, §2301.476.

Subchapter E, General Distinguishing Numbers.

Existing Title 16, Part 6, Chapter 111, relating to general distinguishing number (GDN) licenses is transferred to Title 43, Chapter 8, Subchapter E, with the following additions and changes.

Section 8.133(e), General Distinguishing Number, is changed from the original §111.3(e), by deleting the requirement that corporations must provide verification that corporate franchise taxes have been paid to obtain a license, to comport with the repeal of Article 2.45 of the Texas Business Corporation Act.

Section 8.138, Temporary Cardboard Tags, §8.139, Metal Dealer License Plates and Temporary Cardboard Tags, and §8.146, Converters License Plates and Temporary Cardboard Tags, is revised from the original Title 16, Part 6, §§111.8, 111.9 and 111.17. Transportation Code, §503.062 and §503.0625 provide motor vehicle dealers and converters with a means to transport and test drive vehicles with expired or otherwise invalid registration by allowing them to use cardboard dealer and converter tags. Transportation Code, §503.063 authorizes dealers to place temporary buyer's tags on unregistered vehicles to allow a purchaser to drive the vehicle until registration is completed. A dealer may issue a supplemental temporary buyer's tag only if the dealer is unable to obtain documents necessary to transfer title from a lienholder. Under the statute, the department is responsible for prescribing the specifications, form and color of temporary tags, but may not issue or contract to issue the tags.

The current design of temporary buyer's tags was adopted effective December 31, 1997, in conjunction with amendments required as a result of legislation that provided for issuance of a supplemental buyer's tag (House Bill 1137, 75th Legislature, Regular Session, 1997). Currently, the prominent feature of the buyer's and supplemental buyer's tags is the expiration date of the tag. The prominent feature of dealer and converter tags is the license number. The tags also contain the department's "Flying T" copyrighted logo or mark, which may only be imprinted by licensed printers. This design was adopted in an effort to stop counterfeiting and help law enforcement easily ascertain whether temporary buyer's tags were legitimate.

The department has observed no decrease in counterfeiting or misuse of temporary buyer's tags. The current design may actually put law enforcement at greater risk inasmuch as peace officers could assume that a tag is genuine because it bears the TxDOT mark, when it is possibly counterfeit. The revisions may improve public safety and aid law enforcement by reducing the number of false and forged temporary tags. Changing the form means that any temporary tag using the old form is presumably invalid. Currently, such invalid or false tags can be used to transport stolen vehicles and conceal unregistered vehicles being used for contraband trafficking.

The revisions are intended to make certain changes to the overall design and use of all temporary tags. Tags will no longer contain the department's "Flying T" logo and printers will no longer be required to execute licensing agreements with the department to print temporary tags.

In response to comments, the department is amending §8.138 and its appendices, relating to dealer and buyer's tags. Section 8.146, relating to converter tags, is also amended to maintain uniformity. The prominent feature of the dealer and converter

tags will be the phrase "UNTITLED VEHICLE" instead of "UNREGISTERED VEHICLE" as originally proposed. In addition, the expiration date of the tag is reinstated. The department is amending 8.138 to eliminate the proposed requirement that the material of the tag be 24 Point Poly Coated C2S Board, and will retain the requirement for 6-ply cardboard material contained in the original rule. All temporary tags must contain a unique control number printed on the front of the tag. Dealers and converters who issue tags will be required to maintain a record of each tag issued. In response to comments, the department is adopting §8.138 and §8.146 with changes to clarify that tags may be issued and issuance recorded in any commercially reasonable manner, so long as tag issuance may be traced.

If a temporary tag or metal dealer plate can no longer be accounted for, it must be noted in the dealer's or converter's log and reported as missing to the department. Dealers already maintain information relating to sales of used vehicles under Occupations Code, Chapter 2305, (Records of Certain Vehicle Repairs, Sales, And Purchases) and §8.144 of Subchapter E. The log requirement will merely involve noting information about the issuance of the temporary tag in addition to what is currently required. Law enforcement and department personnel frequently find temporary tags in the possession of persons who did not buy a vehicle from a dealer. The log will provide information to law enforcement and the department on whether the dealer issued the unauthorized tag, and will protect dealers against allegations of wrongdoing if the dealer can show the log has been completed correctly.

New §8.138(d) states that the log shall be available for review by department personnel during normal working hours. In addition, temporary tags that cannot be accounted for shall be marked as void in the dealer's log to enable law enforcement and department personnel to identify which tags may be unlawfully in circulation and subject to misuse.

New §8.138(e) provides for a compulsory compliance period. The rule states that dealers have until May 1, 2006 to implement the log requirements and the new temporary tag design. Prior to May 1, 2006 the previous temporary tag design of 16 TAC §111.8 will also be in effect and can be used by the dealer. This will allow dealers additional time to deplete current temporary tag stock and establish a new process to meet the log requirements. Dealers are required to implement the new tag design and the log requirements simultaneously.

Other revisions eliminate unique charitable organization tags, and allow use of dealer tags instead. Tags placed in the rear window of a vehicle must be visible from a distance of 15 feet. When tags are placed in license plate holders, printed matter may not be obscured. Other overall revisions conform the font and style of each tag to one another, conform language to that contained in Transportation Code, §§503.062, 503.0625, and 503.063, and correct grammar.

New §8.144, Record of Sales and Inventory, is modified from the original Title 16, Part 6, §111.15. HB 988, 79th Legislature, Regular Session, 2005, amended Transportation Code §501.0234, to allow the purchaser of a vehicle to choose the county in which a dealer should apply for title and registration. It also states that a dealer has a reasonable time to comply and is not in violation during the time in which the dealer is making a good faith effort to comply. The rule formerly required dealers to provide purchasers with the receipt for title application within 20 working days of the date of purchase. In recognition of the difficulties dealers may encounter when applying for title in distant parts of the state, §8.144(c) requires dealers to apply for certificate of title and registration within 20 working days, rather than provide the receipt. Dealers are still required to provide the purchaser with the application receipt, and must maintain a copy of the receipt in the sales file. A copy of the receipt in the sales file may be used as evidence of a good faith effort to comply with the filing requirement.

Section 8.144(e) is revised from the Title 16 Part 6 rules to require dealers who sell vehicles that will be transferred out of state, to either provide the purchaser with properly assigned evidence of ownership or file application for certificate of title within 20 working days. The addition of the time limit will help purchasers title and register vehicles in their new location in a timely fashion, and allow them to receive the license plates that are necessary to operate their vehicles on public roadways.

House Bill 2495, 79th Legislature, Regular Session, 2005, added Transportation Code, §503.039, which allows public auctions who hold GDNs to take title from the consignor of a vehicle after the sale, but prior to transferring it to the buyer. In addition, auctions must apply for transfer of title on behalf of the purchaser within 20 working days of the sale of the vehicle. New §8.144(f) clarifies the records that public motor vehicle auctions must keep regarding vehicles consigned for sale and the manner and sequence in which title assignments must be made.

Section 8.146(o) provides converters the same compulsory compliance period given to dealers in §8.138(e). Converters will have until May 1, 2006 to implement the new temporary tag design and log requirements. Converters are required to implement the log requirement simultaneously with the new tag design.

Subchapter F, Lessors and Lease Facilitators.

Existing Title 16, Part 6, Chapter 109, relating to licensing lessors and lease facilitators, is transferred to Title 43, Chapter 8, Subchapter F. There are no significant revisions to this subchapter.

Subchapter G, Warranty Performance Obligations.

Existing Title 16, Part 6, Chapter 107, relating to the Lemon Law, is transferred to Title 43, Chapter 8, Subchapter G, with the following changes. Provisions allowing parties to choose whether to file motions for rehearing with the board or the director are revised to reflect the new delegation of duties.

Subchapter H, Advertising.

Existing Title 16, Part 6, Chapter 105, relating to advertising regulation, is transferred to Title 43, Chapter 8, Subchapter H. There are no significant revisions to this subchapter.

The department conducted five statewide hearings to receive comments concerning the proposed amendments. Various oral and written comments were received from 51 individuals and entities representing licensed franchised and independent dealers, dealer organizations, law enforcement, toll authorities, an international bridge administrator, and concerned citizens.

COMMENTS

Comment: The Texas Automobile Dealers Association (TADA) commented regarding proposed §8.114, Sale of Vehicles by Manufacturer/Distributor at Wholesale Auction. TADA suggests changing the language from "vehicle" to "a motor vehicle or a towable recreational vehicle that has been the subject of a retail sale" since the word "vehicle" is not defined in Occupations

Code Chapter 2301, but the terms "motor vehicle", "towable recreational vehicle" and "new motor vehicle" are defined.

Response: The department does not concur. General Distinguishing Numbers are issued under Transportation Code, Chapter 503, and allow a person to buy, sell, or exchange used motor vehicles. Section 8.114 is not promulgated pursuant to Occupations Code, Chapter 2301, but rather under the authority of Transportation Code, Chapter 503, which does define "vehicle" as "a motor vehicle, motorcycle, house trailer, trailer, or semi-trailer." The requested change is unnecessary.

Comment: Two law enforcement officers explained that officers can access information without leaving their patrol cars because they can search a database by the metal license plate number and retrieve information as to whether the owner of the vehicle has warrants, if the vehicle has ever been stopped before, or if the vehicle is stolen. That information is not available if a vehicle bears a temporary tag. Three officers commented that criminals use temporary tags because they know that law enforcement cannot get immediate information and that a traffic stop is necessary to obtain the Vehicle Identification Number (VIN).

Response: The department agrees that there is no mechanism for law enforcement to timely obtain information about vehicles bearing temporary tags. Legislative change is necessary to address the concerns of real-time or near real-time information. However, the new rules will aid law enforcement investigations.

Comment: Three officers explained that dealers' GDNs cannot now be identified through law enforcement databases. If GDNs were in the database, every vehicle bearing a temporary tag would be listed as stolen, harming innocent consumers. Two independent dealers stated that black dealer tags do not contain any information to tie the tag to a vehicle. One independent dealer stated he was unaware that there is not database access regarding the dealer license number on a temporary tag. Two claimed that dealer numbers are in the database, and that, coupled with the VIN and buyer's name currently on buyer's tags, provide enough information for law enforcement.

Response: The department agrees that law enforcement databases do not contain dealer's license numbers, and there is no mechanism for law enforcement to timely obtain information about dealers of vehicles bearing temporary tags. However, the log requirement and control numbering system will aid law enforcement in investigating fraudulent tags.

Comment: The McAllen/Hidalgo International Bridge Director commented that the state has no control over temporary tags. Ten law enforcement officers stated that tags are not traceable, and that enforcement cannot trace a vehicle to its purchaser or authorized driver if it bears temporary tags. One officer commented that legitimate tags are currently printed in bulk by licensed printers, and they have no way to track how many they actually have. Three dealers stated that bogus blank tags can be purchased at flea markets.

Response: The department concurs that temporary tags cannot be issued or controlled by the state. The statute restricts the department to controlling the size, color, and specifications of temporary tags. However, the log requirement and the control numbering system will improve the current system.

Comment: Three law enforcement officers and four franchised dealers commented about officer safety concerns. Officers testified that the inability to identify a vehicle or its owner from the information on a temporary tag is a safety issue for enforcement. If a vehicle is involved in a serious crime against an officer or a person, the police are unable to track down the vehicle. One officer stated that enforcement does not want to create additional work for dealers, but said dealers should think about the public safety issue.

Response: The department concurs with these public safety issues and believes as adopted the new temporary tag system is a positive step for law enforcement concerns.

Comment: Two franchised dealers quoted law enforcement officers they had talked to. One stated that the current tag system is sufficient for police information and safety, and that he had not had a problem in 20 years. Another said most officers she talked to told her that their apprehensions are no greater than when they stop a vehicle with a permanent plate. One franchised dealer commented that an officer is in just as much danger walking into a convenience store as he is stopping a car. Another commented that officers should not be nervous about stopping a car with a paper tag since that is their job. He then said that a traffic stop is one of the most dangerous things a patrol officer does.

Response: The department does not agree. The inability to identify a vehicle or its owner before approaching it on foot is a serious safety concern and adds unnecessary risk. However, the current statute does not authorize the department to implement a temporary tag database.

Comment: Several law enforcement officers commented that temporary tags are not considered to be government records and that there is no penalty for counterfeiting or altering a temporary tag. One officer stated that three district attorneys in three different counties advised him that they could not successfully prosecute for tampering with the government record unless they could prove harm. The dealer association countered by citing Martinez v. The State of Texas, 6 S.W.3d 674 (Tex. Civ. App.-Corpus Christi 1999, no writ), where the court held that a motor vehicle buyer's tag is a government document because it is a record required by law to be kept by others for information of government. The court distinguished between a governmental record "issued by the government" and one that is "issued pursuant to the government's instruction."

Response: The difference appears to be a matter of degree. Temporary buyer's tags are considered to be records required to be kept by others for information of government. (Penal Code, §37.01(2)(B). However, a temporary tag does not become such a record until the required information is written on the tag. There are no criminal penalties for misuse of a blank tag. Under Penal Code, §37.10(c)(1), an offense is a Class A Misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony. There are provisions in §37.10(g) that hold that a person is presumed to defraud or harm another, if the offender acts with regard to two or more government documents and the documents are licenses, certificates, permits .. .issued by the government. Temporary tags are not considered licenses, certificate or permits issued by the government, and therefore, are not subject to enhanced penalties unless intent to defraud or harm can be proven. Under Transportation Code, §§503.062, 503.0625 and 503.063, temporary tags cannot be issued by the department. The department welcomes the opportunity to clarify the issue, but notes that the proposed rules cannot affect the status of temporary tags as government documents.

Comment: Four auto theft task force officers commented that temporary tags are stolen from dealerships by criminals or dealership employees. One stated that the biggest problem with tag theft is at smaller used car dealerships. Two officers commented that it is not unusual for criminals to pretend to be buyers and divert the salesman's attention so they can steal temporary tags. Three officers stated that they have seen salesmen and other disloyal employees steal tags and sell them when they are not secured. One stated that he has seen stolen or counterfeited tags bearing the names of the largest franchised dealerships in San Antonio. An independent dealer acknowledged that there are some dealers who would sell temporary tags.

Response: The department concurs that temporary tags may be stolen from legitimate dealerships for criminal use. Requiring the log and control number will assist law enforcement in investigating stolen blank tags.

Comment: Nine franchised dealers and five independent dealers commented that their tags are kept secured, and described the security process at length. One independent dealer conceded that an employee could steal tags, but his employees know they will be fired immediately if they do. Another dealer commented that dealers are not allowed to leave black tags on vehicles because they are supposed to be kept under lock and key at all times. One dealer commented that black dealer tags are often found lying around at auctions.

Response: The department acknowledges that not all dealers neglect tag security. However, not all dealers treat temporary tags as accountable documents, and they are subject to theft. There is no requirement that black dealer tags be kept under lock and key. Transportation Code, §503.063(d) does require dealers to be responsible for red buyer's tags.

Comment: Five auto theft task force officers from San Antonio, El Paso, Hidalgo County, and the Department of Public Safety (DPS), as well as two independent dealers commented that tags are counterfeited to abet criminal activities. Three detectives noted that temporary tags are commonly counterfeited in Mexico. One DPS sergeant displayed a false red tag that had Velcro on the back for fast removal and application. Another officer stated that tags are falsified so well, including the department's "Flying T" mark, that one cannot tell the difference between a real one and a counterfeit. Criminals are learning that red buyer tags are drawing attention from law enforcement. One auto theft detective noted that he has observed an increase in counterfeiting and abuse of black dealer tags.

Response: The department concurs that the current design of temporary tags is easily counterfeited and believes that the change in the design including the control number will provide law enforcement with an investigation tool.

Comment: An officer from the Department of Homeland Security, Immigration, and Customs Enforcement explained that the department is responsible for national security, terrorism investigations, contraband and drug smuggling, money laundering and critical technology exportation. Its investigations have revealed that criminal organizations often place counterfeit dealer tags on vehicles to facilitate covert transportation of illegal commodities and allow criminals to travel with anonymity. Officers from auto theft task forces in Laredo, San Antonio, Galveston, El Paso, and the Travis County Sheriff's department commented that criminals use temporary tags in the commission of crimes and for narcotic trafficking. Tags are used by criminals to conceal identity. Some criminals are known to be armed and dangerous. Stolen or counterfeited dealer tags allow criminals to steal vehicles in broad daylight because officers believe the vehicles are being demonstrated. The director of the McAllen/Hidalgo International Bridge stated that many stolen vehicles leave the country on cardboard tags. One auto theft detective noted that criminals keep a supply of counterfeit temporary tags to use as needed.

Response: The department concurs that the current temporary tag can be used to facilitate criminal activities. The new tag and log requirements are designed to aid law enforcement in investigations regarding fraudulent use of temporary tags.

Comment: Fourteen franchised dealers and seven independent dealers stated that they had never been cited for tag violations. Another dealer stated that four police departments he queried advised that they had never had a tag problem with franchised dealers. Three dealers testified that they had never had a vehicle bearing temporary tags used in a crime.

An independent dealer and an officer commented that it is common to see counterfeited tags bearing the names of large, reputable franchised dealers at flea markets and on curbstoned vehicles in San Antonio and Houston. A law enforcement officer commented that it is not surprising dealers are unaware if vehicles bearing their tags are used in crimes, because enforcement does not usually notify the dealer when their tags are used to conceal criminal behavior.

Response: The department acknowledges that many dealers are not aware of the scope of the problem, and concurs with comments indicating that temporary tags are used in criminal activity.

Comment: One dealer explained that vehicles that have been salvaged are not eligible for a title or license plates. The vehicle should receive a salvage certificate. A salvage vehicle is not to be driven or sold until it is rebuilt and obtains a salvage title. A law enforcement officer and a dealer commented that salvage dealers and other individuals use temporary tags to drive vehicles that cannot pass inspection on the public streets. In addition, salvage vehicles are often for sale on the side of the road, or "curbstoned". The sellers use temporary tags to disguise the fact that the vehicles are salvage and cannot pass inspection or qualify for a title. Consumers purchase unsafe vehicles without ever knowing the true condition of the vehicle.

Two enforcement officers and two dealers commented that individuals and criminals use temporary tags to mask the fact that the driver does not have insurance or that the vehicle cannot pass inspection.

Response: The department agrees that temporary tags are used to conceal salvage, uninspected, and unsafe vehicles. Lack of control of temporary tags causes injury to the general public by allowing unsafe vehicles on the road. Although the rules will not eliminate this problem, the additional requirements will provide some deterrent.

Comment: Two officers and a former investigator, now with the North Texas Tollway Authority, commented that the state loses revenue through misuse of temporary tags. Small independent dealers who provide their own financing are known to issue a series of buyer's tags instead of putting a lien on the vehicle and titling it. If the consumer misses a payment, the vehicle is repossessed. Since the vehicle was never registered, no sales tax was paid. The investigator stated that individuals counterfeit tags to avoid paying taxes and obtaining liability insurance.

Response: The department agrees that misuse of temporary tags causes the state to lose tax revenue. The new design of the temporary buyer tag provides notice to the purchaser that the tag is issued for 21 days only; thereby, advising them that they should receive the metal plates within this time period.

Comment: A representative of the North Texas Tollway Authority explained that the Authority automatically takes a picture of the license plate as a vehicle goes through. If the owner does not pay, the authority sends a letter to the owner of the vehicle. It cannot identify the owner to send a letter and collect tolls if the vehicle bears paper plates. The revenue is lost. For example, a woman was arrested for failing to pay an $82,000 debt to the toll authority. Had her vehicle carried paper tags, the authority would not have been able to locate her at all, and there would be no chance of recovering the money.

Response: The department agrees that misuse of temporary tags causes the state to lose toll revenue. The current statute does not provide for a temporary tag database that would address the concerns of the Toll Authority.

Comment: One officer commented that taxes should be calculated on the value of a vehicle, rather than what the seller or buyer declares. The State of Texas is losing a lot of revenue because people falsify sales prices.

Response: This subject is outside the scope of this rule proceeding.

Comment: One dealer commented that there are more legitimate dealers collecting and paying tax and in compliance than those avoiding the law.

Response: The department acknowledges that there are probably more dealers who abide by the law and pay sales tax than those who do not. However, there continues to be a problem in this area.

Comment: The Texas Automobile Dealers Association (TADA) commented that dealers have every incentive to timely title and register vehicles in order to have their vehicles funded and pay the floor plan financing. Ten franchised dealers commented that there is no benefit in delaying the application for title. One dealer commented that a dealership that plays the float is a dealership in trouble.

Response: This incentive only applies where there is floor plan financing or perhaps where the vehicle is the subject of third party retail financing. The opposite would be true in cash sales and where the dealer is self-financing its sales.

Comment: TADA commented that tax audits by the Comptroller indicate there are few deficiencies, and provided data from the audits in support.

Response: It is unclear whether the audit data applies to franchised dealers or all dealers. Nevertheless, the data provided reveals that in fiscal year 2005, with 42 audits conducted of either 2,000+ franchised dealers or 16,000+ dealers, nearly 1.9 million dollars in sales tax deficiencies were discovered. Two results are apparent. First, 32 out of the 42 audits yielded the deficiencies. Thus, 75% of the time a deficiency was uncovered (this same ratio is also true of the 2004 period and, so far, it is 100% for 2006). Second, only 42 audits in each fiscal year were necessary to uncover nearly 1.9 million dollars in unpaid taxes in fiscal year 2005 and almost $73,000 in fiscal year 2004. The department cannot estimate how large the tax deficiency would be if the Comptroller audited 16,000 dealers instead of 42 dealers, but conjectures it would reveal tax deficiencies in the millions. The department finds this potential for lost revenue more than justifies taking measures to ensure taxes are paid and to facilitate motor vehicle sales tax audits.

Comment: Seven law enforcement officers, a former investigator, three franchised dealers, one independent dealer and a representative of the Texas Independent Automobile Dealers Association (TIADA) commented that "buy here-pay here" or "tote-the-note" dealerships are the source of most dealer problems with temporary tags. These are dealers who provide vehicle financing themselves instead of using a finance company.

Four officers, a former investigator and two franchised dealers commented that these dealers often issue a series of buyer's tags instead of putting a lien on the vehicle and applying for title in the customer's name. The dealer does not apply for title or pay sales tax until the customer has paid for the vehicle in full. It is much easier to repossess a vehicle for nonpayment if the title has not been transferred and the vehicle still bears temporary tags. If the consumer misses a payment, even by two days, the vehicle may be repossessed. A DPS auto theft investigator related that one dealer gave a consumer 30 tags rather than transfer title, and the dealer then went out of business. Another auto theft task force officer commented that he receives numerous complaints from consumers where the dealer issues multiple buyer's tags instead of applying for title. Two consumers testified that dealers issued them multiple temporary tags to delay discovery that title would not be transferred. One stated that he has been purchasing 30-day permits each month so he can drive the vehicle. It is costing him $300 a year. Both dealers disappeared without transferring title. Another consumer testified that her vehicle had been repossessed, even though her payments are current.

A former investigator, now with the North Texas Tollway Authority, stated that consumers cannot register their vehicles, or sell them, if title has not been transferred.

An independent dealer representing TIADA commented that reputable dealers do not issue a series of temporary tags rather than titling and registering a vehicle. Few dealers do that now that sales tax can be paid as payments are made. The ones who do should be severely dealt with. A franchised dealer quoted a police officer, who stated that fly-by-night dealers should be held accountable for abusing current rules.

Response: The department agrees that the majority of the dealerships probably do not participate in fraudulent activities. However, even though a small percentage of licensed dealers conceal harm to consumers by issuing multiple tags instead of transferring title until the vehicle is paid for, or never transferring title, the damage is significant. Temporary tag complaints are directly related to the violation of not applying for title in a timely manner. Buyers must drive vehicles without valid registration. These complaints have increased 150% from FY 2004 to FY 2005, and 273% from FY 2003 to FY 2005. One consumer received 16 temporary buyer's tags since July 2005. In the same time period 158 complainants never got their titles at all. Many of the dealers subsequently went out of business. The buyers had paid for tax, title, and license, but were forced to do so again to secure bonded titles for their vehicles. The activity often harms the most vulnerable Texas citizens, who may be unsophisticated or do not have the resources to pursue legal action.

Comment: Two franchised dealers, one independent dealer, four law enforcement officers, and a former investigator commented

that franchised dealers and large independent dealers are not the problem. One dealer commented that there is a difference between franchised dealers and independent dealers. Franchised dealers have a large overhead, significant investment, and oversight from manufacturers.

Response: The department concurs that the majority of franchised dealers are not the segment of the industry that contributes to abuse of temporary tags.

Comment: One dealer commented that not all dealers are criminals. There are thousands of dealers who are compliant. Another stated that the problem is not with a small group of good dealers, but with the large number of small dealers who abuse the privilege of having temporary tags.

A law enforcement officer observed that laws may put a burden on legitimate dealers. Dealers should consider the number of citizens who are defrauded because some dealers issue multiple tags instead of transferring title. An independent dealer commented that dealers must be willing to endure more controls to improve the industry.

Response: The department concurs that a large number of dealers are compliant and do not contribute to the problem of temporary tag abuse. However, this does not negate the fact that temporary tags are misused by dealers and others and that controls are necessary.

Comment: Three dealers commented that current laws are not being enforced and favored increased enforcement instead of a rule revision. Two law enforcement officers stated that officers often do not understand the regulations and will not act. One dealer commented that enforcement officers should seek information if they do not understand the existing rules. One officer and two dealers commented they understood that TxDOT's Motor Vehicle Division does not have enough personnel to monitor the situation. The officer stated he is working to train other officers in the law relating to temporary tags. A dealer commented that Motor Vehicle Division personnel cannot address the current backlog of complaints and would not be able to monitor the new rules.

Response: The department concurs that temporary tag enforcement is a complicated matter and that it will take the cooperation of all interested parties to improve the system.

Comment: Ten franchised dealers, five independent dealers, a printer, and TADA tendered comments that the proposal would not improve the current system. Four dealers quoted law enforcement officers they had interviewed, stating that officers do not believe the proposal would help law enforcement. Seven dealers and TADA stated that the proposed changes would not assist law enforcement.

Seven dealers and a printer commented that the proposal would not stop counterfeiting of temporary tags. Two pointed out that any format, including currency and checks, can be counterfeited, and the proposal would not stop the practice. One dealer stated that the new material would not prevent counterfeiting. Another noted that the proposal will not stop production of false tags in Mexico.

Two dealers commented that individuals and criminals will still misuse tags, regardless of any changes. One stated that compliant dealers will continue to abide by the law, and criminals will continue to abuse the system. Another dealer pointed out that the proposal will not account for or track casual sales or correct the problem with salvage titles and curbstoning salvage cars.

Response: The department does not concur. The proposal will not eliminate all types of abuse or criminal activities, and the department acknowledges that any document can be counterfeited. However, the phrase "UNTITLED VEHICLE" should make the tags somewhat less attractive and therefore less likely to be counterfeited. The addition of control numbers and the log requirement will assist law enforcement.

Comment: Five law enforcement officers commented that they would welcome any improvement in the current system. Eight officers commented that control numbers and logs would provide a means to investigate criminal activity.

Response: The department concurs.

Comment: Sixteen franchised dealers, nine independent dealers, TADA, TIADA, and a printer opposed the proposal. TADA requested that the rule remain in place as adopted in 1997. One dealer stated that the dramatic cost increase and burdensome record requirements place an unreasonable financial onus on Texas dealers that would outweigh any positive impact, if any, of the proposed changes in reducing tag fraud and misuse. Twenty-three other dealers tendered similar comments, citing figures from $2,000 a year for a smaller dealership, to half a million dollars a year for a large, multi-location dealer. Three dealers stated they would like to help enforcement and address the problem in some fashion, but did not believe the proposal is the solution.

Response: Section 8.138 and §8.146 have been amended to alleviate concerns about expense and record keeping. The sections are revised to clarify that tags may be issued and issuance recorded in any commercially reasonable manner so long as tag issuance may be traced.

Comment: Three franchised dealers, a printer and one law enforcement officer commented that the current system works. Two stated that the system works because the buyer's tag shows an expiration date. A dealer acknowledged that there are some minor problems with the system. People do counterfeit tags, but overall the system works pretty good. There will be problems with any system that is devised. Another dealer stated that the current system is low cost, effective, easy for dealerships to control, and it works.

Response: The department does not concur. Testimony indicated that most tag misuse does not stem from dealers who keep good records and secure their temporary tags. The regulations are adopted to address abuse by others. In addition, the department is amending §8.138 and appendices B-1 through B-4 to reinstate the expiration date requirement.

Comment: Six law enforcement officers, the McAllen/Hidalgo bridge director and a dealer commented that the present system does not work. One officer stated that the system is antiquated. The dealer commented that the current system is an honor system, and does not work.

Response: The department concurs and believes the new log requirement and the control number will improve the system.

Comment: Ten law enforcement officers, five franchised dealers, two independent dealers, and TADA commented in favor of an electronic tag system, commonly called an e-tag. The concept is similar to that used in Arizona, where information regarding a vehicle sale is entered into a database. A temporary tag is printed with a unique identifying number, the make, model, and VIN of the vehicle, and the dealer's name. The information becomes part of the enforcement database. It is immediately available so

officers can obtain meaningful information about a vehicle and the owner before approaching it on a traffic stop. The data is used to create a permanent record when the dealer applies for title.

A DPS theft investigator commented that an electronic tag system would prevent citizens from receiving tickets for vehicles they no longer own, and would allow officers to track stolen vehicles more quickly. Another DPS officer acknowledged that an e-tag could be counterfeited, but it would be more difficult. E-tags would be more legible than hand-written temporary tags and give enforcement a valuable tool. DPS officers are in favor of the e-tag. A police officer commented that the information could be released to law enforcement without breaking privacy laws. A deputy sheriff stated that an e-tag would allow felony prosecution for misuse or counterfeiting because it would be a document issued by the government.

A representative of the North Texas Tollway Authority and the director of the McAllen/Hidalgo International Bridge explained that both entities have cameras that take photographs of license plates as vehicles pass through, but temporary tags bear no information that allows them to be traced. Both expressed interest in any system that would allow vehicles and their owners to be identified. The tollway authority loses over a million dollars per year on uncollected tolls because it cannot identify the owner of a vehicle that bears a temporary tag. The border bridge cannot detect stolen vehicles or assist enforcement if the vehicles carry a temporary tag. All ports of entry have the same problem.

Response: The department concurs and is willing to implement an electronic tag system. However, the current statute does not authorize a temporary tag database. Pursuant to legislation passed during the 79th Legislature, Regular Session, 2005, the department is studying the use of an electronic tag system. The results of this study will be provided to the legislature prior to the next legislative session.

Comment: Three franchised dealers, two independent dealers, TADA, and two law enforcement officers commented that the state should work with dealers and enforcement to find a workable, reasoned solution for everyone. Two franchised dealers, TADA, and one officer suggested leaving the current design in place until electronic tags are implemented.

Response: The department has been soliciting input on temporary tag problems since 1996 and continues to do so through the rulemaking process. Implementation of an electronic tag system requires legislative authorization. There can never be a guarantee as to what legislation may be enacted during any given legislative session. In addition, it may take some time to implement an electronic tag system once approved by the legislature. It would be irresponsible to delay attempts to correct existing problems because of the expectation of another system in an uncertain future.

Comment: Ten franchised dealers, one independent dealer, a printer, and TADA commented on the requirement that tags be made of 24 Point Poly Coated C2S board. All commented that the cost of the material would increase the cost of temporary tags by 200 to 300 percent. A printer stated that the material is difficult to locate and would have to be manufactured by special order. It would take two months for manufacture and delivery, and the manufacturer would require a 10,000 pound minimum order. This will slow production of temporary tags and increase costs to the printer, which would be passed on to dealers. Dealers stated that the expense is unjustified and an unreasonable burden.

Others commented that the material is too durable for its intended use, stating that poly coated paper will not deteriorate, and law enforcement will not be able to determine if a tag is old. The printer noted that information on the material can be altered by wiping off the writing with alcohol. A dealer pointed out that ordinary writing instruments will not work on the material, and suggested that the department test its use before implementing the requirement.

Response: Based upon historical and present-day abuse of temporary tags, the department does not automatically reject a proposal for improvement because it involves a cost increase. However, a full examination of this particular proposal leads the department to concur and the department amends §8.138 to remove the requirement that temporary tags be printed on 24 Point Poly Coated C2S Board paper. The former requirement for 6-ply cardboard is reinstated.

Comment: Four franchised dealers, TADA, and a printer commented regarding the cost of imprinting a control number on temporary tags. All commenters agreed that the requirement would increase the cost of printing tags. Estimates of the increase ranged from 50 to 75 percent. One dealer stated that it would double the cost. The printer stated that some dealers already use a sequential control number. Addition of the sequential number costs a little bit less than double what it costs to print tags without a control number. He then said that the cost would increase by approximately 60 percent.

Response: The department acknowledges that the requirement for a control number will increase the cost of printing temporary tags, however, the department feels the benefit outweighs the additional cost.

Comment: A printer commented that the sequential number requirement would slow production. He stated that it is important to offer same day service, and that would not be possible if control numbers were required. He commented that only about 10 percent of printers have the special equipment to print sequential numbers, unless they are forms printers. He acknowledged that there are enough printers capable of sequential numbering to maintain a competitive market.

Response: The department acknowledges that the requirement for a control number may slow tag production, but believes the control number will improve the current system by providing law enforcement the ability to track a particular tag.

Comment: An independent dealer commented that putting control numbers on tags would make small dealers that abuse tags accountable.

Response: The department concurs.

Comment: Four franchised dealers commented that the log requirement would not be helpful to police for traffic stops, especially those stops made after business hours, because dealers will not violate privacy laws by providing information via telephone and are not even available to respond after business hours. Two law enforcement officers agreed a log would not be helpful during traffic stops or after business hours. A dealer stated that officers can now call a dealership with a VIN, and the dealer can verify whether the vehicle was in inventory or sold, even if the dealer will not release information about the buyer.

Five officers stated that the requirement to record control numbers would give law enforcement a valuable tool for investigating crimes and tag misuse and aid in identifying whether a dealer issued the tag. One officer stated that the proposal will still cost the state money, because day shift officers will have to investigate traffic stops made by the night shift, taking time from their regular work.

Response: The department acknowledges that the log requirement will not be helpful to police during traffic stops and after business hours. However, the department considers any new investigative tool to be an improvement.

Comment: One independent dealer suggested that the department enact a rule requiring consumers who drive vehicles bearing red buyer's tags to carry their sales contract and proof of insurance. Law enforcement could ask to see those documents in a traffic stop and be able to verify legitimacy immediately.

Response: The department does not have the authority to adopt rules requiring the purchaser to carry additional documents when operating the vehicle. In addition, the statute currently requires citizens to carry proof of insurance, and such a requirement has not eliminated the abuse of the temporary tag system.

Comment: Representatives of TADA and TIADA, as well as ten franchised dealers and six independent dealers, commented that the language in the proposal leads dealers to believe that a new black dealer tag must be issued each time a vehicle leaves the dealer's premises. The one-time use of dealer black tags, for each time a vehicle is driven from the dealership for test drives, make-ready, or repairs, would be expensive in paper and manpower costs and would be burdensome. One dealer proposed that the log for black dealer tags list either the VIN of the vehicle to which it is assigned, or the name of the employee to whom the tag is assigned. Dealers should not have to tie a black tag to a particular vehicle; they could assign a tag to an employee. Tags could be activated before being put into use.

Response: The department concurs that the process described by dealers would be burdensome. This was not the intent of the proposal. The language in §8.138 and the appendices are amended to clarify that dealers may issue black dealer tags in any commercially reasonable manner, be that one tag to each vehicle, one tag to each driver, or some other assignment system, so long as assignments can be traced.

Comment: Fourteen franchised dealers, eight independent dealers, TADA, and TIADA commented at length that the proposed log requirements would involve dramatic cost increases, significant labor costs, and would be extremely burdensome. One dealer commented that the additional record keeping would slow the sales process, and that customers would not want to wait while dealer personnel logged tags. Three dealers expressed concern about how to log tag assignments when vehicles are purchased at auction and tags are assigned away from dealership premises. Fourteen dealers, TADA, and TIADA stated that dealers would have to hire additional personnel to log and distribute tags.

Three dealers stated that if the one-time use requirement were removed, it would alleviate some of their concerns. The log would still be burdensome, but not as much of a problem. Another dealer commented that the log would still be onerous and that the rules should not be changed.

Response: The department does not concur. The revisions that clarify that black tags may be issued in any commercially reasonable manner should relieve the record keeping burden. Dealers may issue tags in any reasonable manner that meets their needs, so long as the issuance is recorded.

Comment: Two dealers supported the log requirements for buyer's tags, because the tags go with the vehicle when it is sold, and only one entry would be necessary. One dealer stated he did not object to the requirement. Another commented that dealership procedures for buyer's tags would not be affected as much by the proposed changes. One dealer stated that consumers should not have to have multiple buyer's tags to account for everyone who drives the vehicle.

Response: The department agrees that the requirement to log issuance of buyer's tags will not be problematic. The proposal does not require that multiple red tags be issued to a consumer for each family member.

Comment: One dealer and two law enforcement officers commented that dealers already keep records and use control numbers for a variety of reasons. In spite of the burden on dealers, it is necessary to have a log or tracking system to give law enforcement the evidence they need to successfully prosecute a case.

Response: The department concurs.

Comment: Fourteen franchised dealers and four independent dealers described their current systems for tracking inventory. All dealers who testified stated that they keep records electronically in computers, although one dealer suggested that smaller dealers in West Texas might maintain information manually in a ledger. Vehicles are assigned stock numbers when they arrive at the dealerships. Dealers are able to track inventory by stock number and VIN. Information regarding make, model, mileage, and vehicle color may also be maintained. Once a vehicle is sold, information about the buyer is added to the record. Vehicle sales are tracked by customer name and VIN. Two dealers stated that they also assign a customer number or deal number after a vehicle is sold.

Several franchised dealers explained their existing computer systems could not handle the log requirements. One commented that most dealers have dealer-specific computer management systems, and that there are only about four companies that provide the computer product. Another stated that it purchases its tags through Reynolds & Reynolds, a large company that also provides programs to help the dealership track its inventory. One dealer group commented that it would be necessary to invest in software upgrades to comply with the log requirement. Another franchised dealer stated that the proposal would require him to keep a separate log for control numbers. Four franchised dealers, an independent dealer, and TADA commented that the proposal would not help dealers.

Response: The department understands that dealers do not currently track tag issuance and may not have a readily available computerized system to do so. Nevertheless, the benefits to law enforcement and the public outweigh the possible inconvenience to dealers. In addition, the department agrees that the initial proposal may seem cumbersome and has adopted the rule with changes to clarify that control numbers may be any unique combination of letters and numbers, and may be assigned in any commercially reasonable manner, so long as tag assignments may be traced. For example, if a dealer's computer system pre-assigns stock numbers, the dealer may have the stock number series imprinted on its tags so that the stock number may serve both purposes.

Comment: Eight franchised dealers, one independent dealer, two law enforcement officers, and TADA commented regarding whether information from tag logs could be released. The dealers stated that it would not be helpful to keep a log of tag issuance because the Gramm-Leach Bliley Act requires dealers to keep information private at the consumer's request, except in connection with an authorized investigation, subpoena, or summons. In addition, the Federal Trade Commission's "Safeguard's Rule" requires dealer to have an information security program in place. The independent dealer commented that the federal privacy laws should be changed so dealers can divulge personal information about customers to law enforcement officers. Two dealers and two law enforcement officers noted that it does not violate a buyer's privacy to simply confirm whether a temporary tag is legitimately on a specific vehicle. One officer stated that law enforcement is able to access private information in state registration records, even when a citizen has requested that personal information not be released. It would not violate privacy laws if information could be stored in government databases and made available electronically to law enforcement.

Response: The department agrees that dealers should not violate the law by releasing personal information about its customers without appropriate authorization. Nevertheless, law enforcement needs a means to investigate auto theft, drug trafficking, terroristic activities, and other serious crimes. That tool does not now exist. A log showing tag assignments by control number will allow dealers to confirm or deny whether a particular tag has been issued by the dealer. If more information is required, law enforcement can obtain the necessary authorization to view the dealer's records.

Comment: Seven franchised dealers, an enforcement officer, a former investigator, three independent dealers, two consumers, a printer, and TADA commented regarding the proposal to remove the expiration date from buyer's tags.

Two consumers testified that dealers issued multiple temporary tags, in violation of the law, when their original tags expired. Three enforcement officers noted that it is easy and not uncommon for dealers, consumers, and criminals to alter expiration dates. The current requirement to cover the date with tape does not hinder alteration or stop counterfeiting. One officer stated that criminals are aware that the date on a buyer's tag must be current, and will take care to ensure that the tags are completed correctly. Two others commented that persons who use tags to avoid detection would not pay a traffic ticket for having an expired tag. Another officer noted that some officers may issue a citation for having an expired tag, but may not do a thorough investigation to determine if the tag is being used to avoid detection of criminal activity.

An officer and an independent dealer commented that black dealer tags and salvage tags currently have no expiration date and are used by criminals to avoid detection. Two franchised dealers stated that the proposal to remove the expiration date and use the words "Unregistered Vehicle" are an invitation for theft.

In spite of testimony indicating that the expiration date is easily altered and may not be reliable, 11 dealers, five law enforcement officers, a representative of the North Texas Tollway Authority, and a printer commented that an expiration date, visible from a distance, gives law enforcement probable cause to stop a vehicle and is a valuable enforcement tool. The tollway authority representative stated that the expiration date should be large enough for cameras to take a picture.

Response: The department will maintain the expiration date requirement for buyer's tags. Section 8.138 and appendices B-1 through B-4 are amended to retain the expiration date on buyer's tags.

Comment: Six franchised dealers, two independent dealers, TADA, a printer, and two law enforcement officers commented on the proposal to make the words "UNREGISTERED VEHICLE" the predominant feature on the temporary tags. Three dealers and a printer commented that it is redundant to place the words "UNREGISTERED VEHICLE" on the temporary tag, because dealers and law enforcement already know that vehicles bearing temporary tags are unregistered. Two franchised dealers and TADA commented that use of the phrase is an invitation to theft because thieves will know that the vehicle cannot be traced. One dealer commented that low-income customers may have had legal problems and would not want the attention that the phrase would draw from law enforcement. Another dealer stated that the format change may make it undesirable to have an unregistered vehicle. Two dealers commented that the current design is sufficient to put officers on notice that they should be careful approaching a vehicle, and it contains enough information for law enforcement. Two officers supported the proposal. One stated the design puts consumers on notice that they should receive title and license plates within 21 days. Another commented that any control by the state is better than the current system.

Response: The department acknowledges that dealers and enforcement know that vehicles bearing temporary tags are not titled. However, consumers often do not. The proposal will put consumers on notice that title and registration are pending. In addition, the design will serve as a reminder to law enforcement that information about the vehicle cannot be accessed through enforcement databases and extra care should be taken. Section 8.138 is amended to change the phrase to "UNTITLED VEHICLE" in a smaller font to allow room for the expiration date.

The department is also amending §§8.141, 8.147, 8.175, 8.208, 8.245, 8.247, 8.248, and 8.254 to make minor grammatical and cite corrections.

## SUBCHAPTER A. GENERAL PROVISIONS

**43 TAC §§8.1 - 8.6**

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and §2301.476; Transportation Code, §§501.0234, 503.039, 503.061-503.071.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2006.

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Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: February 16, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 463-8630

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## SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

**43 TAC §§8.21 - 8.58**

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

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## SUBCHAPTER C. LICENSES, GENERALLY

**43 TAC §§8.81 - 8.86**

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and §2301.476; Transportation Code, §§501.0234, 503.039, 503.061-503.071.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Richard D. Monroe
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## SUBCHAPTER D. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, CONVERTERS AND REPRESENTATIVES

**43 TAC §§8.101 - 8.114**

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and §2301.476; Transportation Code, §§501.0234, 503.039, 503.061-503.071.

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## SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

**43 TAC §§8.131 - 8.148**

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations

Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and §2301.476; Transportation Code, §§501.0234, 503.039, 503.061-503.071.

*§8.138. Temporary Cardboard Tags.*

(a) Motor vehicle, travel trailer, trailer/semitrailer, and converter tags shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7-inch centers and vertically punched on 4 1/2-inch centers and the letters in the words "UNTITLED VEHICLE" shall not be less than 3/4 inch high. Motorcycle tags shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the letters in the words "UNTITLED VEHICLE" shall not be less than 1/2 inch high. All printed matter on a temporary cardboard tag must be visible and may not be covered or obstructed by a plate holder. Homemade cardboard tags or cardboard tags which have buyer's tag information printed on one side and dealer's tag information printed on the other side are not acceptable.

(b) The following appendices indicate the design and the instructions for printing and use of each of the respective temporary tags:

(1) Appendix A-1 - Dealer (design); Appendix A-2 - Dealer (instructions);
Figure 1: 43 TAC §8.138(b)(1)
Figure 2: 43 TAC §8.138(b)(1)

(2) Appendix B-1 - Buyer - Initial (design); Appendix B-2 - Buyer - Initial (instructions);
Figure 1: 43 TAC §8.138(b)(2)
Figure 2: 43 TAC §8.138(b)(2)

(3) Appendix B-3 - Buyer - Supplemental (design); Appendix B-4 - Buyer -Supplemental (instructions);
Figure 1: 43 TAC §8.138(b)(3)
Figure 2: 43 TAC §8.138(b)(3)

(4) Appendix C-1 - Converter (design); Appendix C-2 - Converter (instructions).
Figure 1: 43 TAC §8.138(b)(4)
Figure 2: 43 TAC §8.138(b)(4)

(c) A dealer shall maintain a record in any commercially reasonable manner that tracks the use and/or location of each tag. The record shall contain those items for each appropriate tag as set out in Appendices A-1, B-1, and B-3 of subsection (b) of this section. The log shall become a part of the required records required to be maintained by the dealer and available for inspection.

(d) The dealer's record as referenced in subsection (c) of this section, shall be available at the dealer's location during normal working hours for review by a representative of the department. Temporary tags which cannot be accounted for shall no longer be valid for use and shall be voided in the dealer's log.

(e) Dealers must be in compliance with the provisions of this section by May 1, 2006. Prior to May 1, 2006, dealers may continue to use the temporary tag designs of 16 TAC §111.8. If the dealer implements the new temporary tag design prior to May 1, 2006, on the date that the dealer implements the new temporary tag design the dealer must meet all other requirements of this section.

*§8.141. Sanctions.*

(a) Revocation/Denial. The director may deny, revoke or suspend a dealer's license (general distinguishing number) or assess civil penalties if that dealer:

(1) fails to maintain a good and sufficient bond in the amount of $25,000 or to be currently licensed as a franchised dealer by the division;

(2) fails to maintain an established and permanent place of business conforming to the regulations pertaining to office, sign, and display space requirements;

(3) refuses to permit or fails to comply with a request by a representative of the division to examine the sales records required to be kept under §8.144 of this chapter (relating to Record of Sales and Inventory) and ownership papers for vehicles owned by that dealer or under that dealer's control, and evidence of ownership or lease rights on the property upon which the dealer's business is located:

(A) during posted working hours, as required in §8.140(1)(A) of this chapter, at the dealer's licensed location, or

(B) through a certified letter request signed by the director or the director's designee;

(4) holds a wholesale dealer license and, without notifying the division and meeting the vehicle display space requirements of §8.140 of this chapter (relating to Established and Permanent Place of Business), is found to be selling or offering to sell a vehicle to someone other than a licensed dealer, unless authorized by statute;

(5) holds a travel trailer dealer license or a trailer/semitrailer dealer license and is found to be selling a motor vehicle or a motorcycle;

(6) fails to notify the division of a change of physical or mailing address and/or telephone number within 10 days after such change;

(7) fails to notify the division of a dealer's name change or ownership within 10 days after such change;

(8) except as provided by law, issues more than one buyer's temporary cardboard tag for the purpose of extending the purchaser's operating privileges for more than 21 days;

(9) fails to remove out-of-state license plates from a vehicle which is displayed for sale;

(10) misuses a metal dealer license plate or a temporary cardboard tag;

(11) fails to display dealer license plates or cardboard tags in a manner conforming to the regulations pertaining to the display of such plates and cardboard tags on unregistered vehicles;

(12) fails to satisfy the notification requirements of §8.144 of this chapter (relating to Record of Sales and Inventory);

(13) holds open titles or fails to take assignment of all certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles acquired by the dealer or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for vehicles sold. (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealer.);

(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the general distinguishing number is issued;

(15) violates any of the provisions the codes, or any rule or regulation of the department, including advertising rules set out in Subchapter H of this chapter (relating to Advertising);

(16) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(17) files a false or forged title or tax document, including sales tax statement or application for a certified copy of a title;

(18) uses or allows use of that dealer's license or location for the purpose of avoiding the provisions of the dealer law or other laws;

(19) makes a material misrepresentation in any application or other information filed with the division;

(20) fails to remit payment for civil penalties assessed by the director;

(21) sells new motor vehicles without a franchised dealer's license issued by the division;

(22) utilizes a temporary cardboard tag that fails to meet specifications as cited in §8.138 of this chapter (relating to Temporary Cardboard Tags); or

(23) violates any state or federal law or regulation relating to the sale of a motor vehicle.

(b) Civil penalties. The director may assess a civil penalty of not less than $50 nor more than $1,000 against a person who violates any provision of subsection (a) of this section, and in determining the amount of any such penalty may consider the relevant circumstances, including but not limited to the factors enumerated in Occupations Code, §2301.801(b).

(c) Pre-sanction citation. In lieu of imposing sanctions under subsections (a) or (b) of this section, the director may issue a pre-sanction citation to a person notifying that person of the nature of the violation, and specifying the date by which corrective action is to be completed and full compliance is to be met; provided, however, that the director may not utilize this procedure in more than three subsequent violations of the same or similar nature by that person in the same calendar year.

*§8.146. Metal Converter's License Plates and Temporary Cardboard Tags.*

(a) Metal converter's license plates shall be attached to the rear license plate holder of vehicles on which such plates are to be displayed pursuant to Transportation Code, §503.0618.

(b) Converter's temporary cardboard tags may be displayed either in the rear window or on the rear license plate holder of unregistered vehicles. When displayed in the rear license plate holder, all printed matter must be visible and may not be covered or obstructed by any plate holder. When displayed in the rear window, the tag shall be attached in such a manner that it is clearly visible and legible when viewed at 15 feet from the rear of the vehicle.

(c) Converter's temporary cardboard tags may only be used on unregistered vehicles by the converter or the converter's employees to:

(1) demonstrate or cause to be demonstrated the vehicle to a prospective buyer who is a franchised motor vehicle dealer or an employee of a franchised motor vehicle dealer;

(2) convey or cause the vehicle to be conveyed:

(A) from one of the converter's places of business in this state to another of the converter's places of business in this state;

(B) from the converter's place of business to a place the vehicle is to be assembled, repaired, reconditioned, modified, or serviced;

(C) from the state line or a location in this state where the vehicle is unloaded to the converter's place of business;

(D) from the converter's place of business to a place of business of a franchised motor vehicle dealer; or

(E) to road test the vehicle.

(d) Prospective buyers who are employees of a franchised dealer may operate a vehicle displaying converter's temporary cardboard tags during a demonstration.

(e) A vehicle being conveyed while displaying a converter's temporary cardboard tag is exempt from the inspection requirements of Transportation Code, Chapter 548.

(f) Converter's temporary cardboard tags may not be used as authorization to operate a vehicle for the converter's or a converter's employee's personal use.

(g) Each unregistered vehicle being transported by a licensed converter utilizing the full mount method, the saddle mount method, the tow bar method, or any combination thereof, shall have a converter's temporary cardboard tag affixed to that vehicle. If the vehicle being transported is of a type which is prohibited from operating upon the public streets and highway (i.e., off-highway vehicle or self-propelled machine) and, thus, cannot qualify for registration, a cardboard tag shall be displayed thereon; and such tag shall be marked in bold letters with the notation "For Off Highway Use Only."

(h) Metal converter's license plates and temporary cardboard tags may be displayed only on the type of vehicle that the converter is engaged in the business of assembling or modifying.

(i) When an unregistered new motor vehicle is sold to a converter, the selling dealer shall remove a dealer's temporary cardboard tag. In such instances, the selling dealer may attach a buyer's temporary cardboard tag to the vehicle; or the purchasing converter may display a converter's temporary cardboard tag or metal converter plate on the vehicle.

(j) A converter may have printed converter's temporary cardboard tags according to the specifications of Appendix C-1 of §8.138 of this chapter (relating to Temporary Cardboard Tags).

(k) A converter shall maintain a record of all converter metal plates issued to that converter and as to each vehicle such record shall consist of:

(1) the assigned metal plate number;

(2) the make;

(3) the vehicle identification number; and

(4) the name of the person in control.

(l) Converter metal plates which cannot be accounted for shall no longer be valid for use and shall be voided in the dealer's log and reported as missing to the department.

(m) A converter shall maintain a record in any commercially reasonable manner that tracks the use and/or location of each tag. The record shall contain those items as set out in Appendix C-2 of §8.138 of this chapter. The log shall become a part of the required records required to be maintained by the converter.

(n) The converter's record, as referenced in subsections (l) and (m) of this section, shall be available at the converter's location during

normal working hours for review by a representative of the department. Temporary tags and metal plates which cannot be accounted for shall no longer be valid for use and shall be voided.

(o) Converters must be in compliance with the temporary tag and log requirements of subsections (j), (l), and (m) of this section by May 1, 2006. Prior to May 1, 2006, converters may continue to use the temporary tag design of 16 TAC §111.8. If the converter implements the new temporary tag design prior to May 1, 2006, on the date that the converter implements the new temporary tag design the converter must meet all other requirements of this section.

*§8.147. Proof of Valid License Required of Foreign Motor Vehicle Dealers.*

(a) All holders of general distinguishing numbers must verify that a foreign motor vehicle dealer holds a valid license from the foreign dealer's country of origin before permitting the foreign motor vehicle dealer to purchase vehicles.

(b) All auctions or dealers who sell a vehicle to a foreign motor vehicle dealer shall stamp in black ink on the back of the title in all unused dealer reassignment spaces the words "For Export Only" and their general distinguishing number. The stamp shall also be placed on the front of the title in a manner that does not obscure any names, dates, or mileage statements. The stamp must be at least two inches wide, and all words must be clearly legible.

(c) Where the purchaser is a Mexican motor vehicle dealer or the agent of a Mexican motor vehicle dealer the following documents must be obtained prior to the sale and maintained in the sales file for each vehicle:

(1) A copy of the Republic of Mexico license issued by the Secretaria de Economia to the Mexican Motor Vehicle Dealer;

(2) A copy of identification documents issued by the Republic of Mexico indicating that the person claiming to be a Mexican dealer is, in fact, a resident of Mexico. Such documents include but are not limited to Mexican driver's licenses, voter registration documents, or official identification cards, if the card contains a picture of the person and lists a physical address;

(3) A completed Texas Motor Vehicle Sales Tax Exemption Certificate For Vehicles Taken Out of State for each vehicle sold to a Mexican dealer, indicating that the vehicle has been purchased for export to the Republic of Mexico; and

(4) A copy of the front and back of the title to the vehicle, showing the "For Export Only" stamp and the general distinguishing number of the auction or dealer;

(5) In the case of agents of Mexican motor vehicle dealers, the file must contain copies of the listed documents for the dealer and documentation supporting the person's claim to be acting as an agent for a Mexican motor vehicle dealer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. LESSORS AND LEASE FACILITATORS

### 43 TAC §§8.171 - 8.181

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and §2301.476; Transportation Code, §§501.0234, 503.039, 503.061-503.071.

*§8.175. Sanctions.*

(a) Revocation/Denial. The director may revoke, deny or suspend a lessor or lease facilitator's license, or assess civil penalties, if that lessor or lease facilitator:

(1) fails to maintain an established and permanent place of business conforming to §8.177 of this chapter (relating to Lessors and Lease Facilitator Licensing, Established and Permanent Place of Business);

(2) refuses to permit or fails to comply with a request by a representative of the division to examine the current and previous year's leasing records required to be kept under §8.178 of this chapter (relating to Records of Leasing) and ownership papers for vehicles owned, leased, or under that lessor or lease facilitator's control, and evidence of ownership or lease agreement for the property upon which the business is located:

(A) during normal working hours at the lessor's or lease facilitator's permanent place of business, or

(B) through a certified letter request signed by the director or the director's designee;

(3) fails to notify the division of a change of address within ten days after such change;

(4) fails to notify the division of a change of lessor/lease facilitator's name or ownership within ten days after such a change;

(5) fails to observe the fee restrictions as described in Occupations Code, §2301.357 and §§2301.551-2301.556;

(6) fails to maintain leasing and/or advertisement records as described in these rules;

(7) fails to remain regularly and actively engaged in the business of leasing vehicles or facilitating the leasing of vehicles for which the license is issued;

(8) violates any law relating to the sale, lease, distribution, financing or insuring of motor vehicles;

(9) uses or allows use of a lessor or lease facilitator license for the purpose of avoiding any provisions of Occupations Code, Chapter 2301;

(10) makes a material misrepresentation in any application or other information filed with the division;

(11) fails to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within ten days of any changes to this list and upon renewal of the license;

(12) violates any state or federal law relating to the leasing of new motor vehicles.

(b) Referral fees prohibited. A lessor or lease facilitator may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.

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## SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

### 43 TAC §§8.201 - 8.210

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and §2301.476; Transportation Code, §§501.0234, 503.039, 503.061-503.071.

*§8.208. Decisions.*

Unless otherwise indicated, this section applies to decisions made pursuant to Occupations Code, Chapter 2301, Subchapter M. Decisions shall give effect to the presumptions provided in Occupations Code, §2301.605, where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's vehicle which creates a serious safety hazard or substantially impairs the use or market value of the vehicle after a reasonable number of attempts, and that the affirmative defenses provided under Occupations Code, §2301.606, are not applicable, the director shall order the manufacturer, distributor, or converter to replace the vehicle with a comparable vehicle, or accept the return of the vehicle from the owner and refund to the owner the full purchase price of the vehicle, less a reasonable allowance for the owner's use of the vehicle.

(2) In any decision in favor of the complainant, the director will accommodate the complainant's request with respect to replacement or repurchase of the vehicle, to the extent possible.

(3) Where a refund of the purchase price of a vehicle is ordered, the purchase price shall be the amount of the total purchase price of the vehicle, but shall not include the amount of any interest or finance charge or insurance premiums. The award to the vehicle owner shall include reimbursement for the amount of the lemon law complaint filing fee paid by or on behalf of the vehicle owner. The refund shall be made payable to the vehicle owner and the lienholder, if any, as their interests require.

(4) There is a rebuttable presumption that a motor vehicle has a useful life of 120,000 miles. Except in cases where the preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 120,000 miles, the reasonable allowance for the owner's use of the vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) the product obtained by multiplying the purchase price of the vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order; and

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 120,000 and having as its numerator the number of miles that the vehicle traveled after the first report of the defect or condition forming the basis of the repurchase order. The number of miles during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(5) There is a rebuttable presumption that the useful life of a towable recreational vehicle is 3,650 days (10 years). Except in cases where preponderance of the evidence shows that the vehicle has a longer or shorter expected useful life than 3,650 days (10 years), the reasonable allowance for the owner's use of the towable recreational vehicle shall be that amount obtained by adding subparagraphs (A) and (B) of this paragraph.

(A) The product obtained by multiplying the purchase price of the towable recreational vehicle, as defined in paragraph (3) of this section, by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days from the time of delivery to the owner to the first report of the defect or condition forming the basis of the repurchase order.

(B) 50% of the product obtained by multiplying the purchase price by a fraction having as its denominator 3,650 days (10 years), except the denominator shall be 1,825 days (5 years), if the towable recreational vehicle is occupied on a full time basis, and having as its numerator the number of days of ownership after the first report of the defect or condition forming the basis of the repurchase order. The number of days during the period covered in this paragraph shall be determined from the date of the first report of the defect or condition forming the basis of the repurchase order through the date of the hearing.

(C) Any day or part of a day that the vehicle is out of service for repair will be deducted from the numerator in determining the reasonable allowance for use of a towable recreational vehicle in this paragraph.

(6) Except in cases involving unusual and extenuating circumstances, supported by a preponderance of the evidence, where refund of the purchase price of a leased vehicle is ordered, the purchase price shall be allocated and paid to the lessee and the lessor, respectively as follows.

(A) The lessee shall receive the total of:

*(i)* all lease payments previously paid by him to the lessor under the terms of the lease; and

*(ii)* all sums previously paid by him to the lessor in connection with the entering into the lease agreement, including, but not limited to, any capitalized cost reduction, down payment, trade-in, or similar cost, plus sales tax, license and registration fees, and other documentary fees, if applicable.

(B) The lessor shall receive the total of:

*(i)* the actual price paid by the lessor for the vehicle, including tax, title, license, and documentary fees, if paid by lessor, and as evidenced in a bill of sale, bank draft demand, tax collector's receipt, or similar instrument; plus

*(ii)* an additional 5.0% of such purchase price plus any amount or fee, if any, paid by lessor to secure the lease or interest in the lease;

*(iii)* provided, however, that a credit, reflecting all of the payments made by the lessee, shall be deducted from the actual purchase price which the manufacturer, converter, or distributor is required to pay the lessor, as specified in causes (i) and (ii) of this subparagraph.

(C) When the director orders a manufacturer, converter, or distributor to refund the purchase price in a lease vehicle transaction, the vehicle shall be returned to the manufacturer, converter, or distributor with clear title upon payment of the sums indicated in subparagraphs (A) and (B) of this paragraph. The lessor shall transfer title of the vehicle to the manufacturer, converter, or distributor, as necessary in order to effectuate the lessee's rights under this rule. In addition, the lease shall be terminated without any penalty to the lessee.

(D) Refunds shall be made to the lessee, lessor, and any lienholders as their interest may appear. The refund to the lessee under subparagraph (A) of this paragraph shall be reduced by a reasonable allowance for the lessee's use of the vehicle. A reasonable allowance for use shall be computed according to the formula in paragraph (4) or (5) of this section, using the amount in subparagraph (B) (i) of this paragraph as the applicable purchase price.

(7) In any award in favor of a complainant, the director may require the dealer involved to reimburse the complainant, manufacturer, converter, or distributor, for the cost of any items or options added to the vehicle but only to the extent that one or more of such items or options contributed to the defect that served as the basis for the order or repurchase or replacement. In no event shall this paragraph be interpreted to mean that a manufacturer, converter, or distributor, will be required to repurchase a vehicle due to a defect or condition that was solely caused by a dealer add-on item or option.

(8) If it is found by the director that a complainant's vehicle does not qualify for replacement or repurchase, then the director shall enter an order dismissing the complaint insofar as relief under Occupations Code, §2301.604. However, the director may enter an order in any proceeding, where appropriate, requiring repair work to be performed or other action taken to obtain compliance with the manufacturer's, converter's, or distributor's, warranty obligations.

(9) If the vehicle is substantially damaged or there is an adverse change in its condition, beyond ordinary wear and tear, from the date of the hearing to the date of repurchase, and the parties are unable to agree on an amount of an allowance for such damage or condition, either party shall have the right to request reconsideration by the director of the repurchase price contained in the final order.

(10) The director will issue a written order in each Occupations Code, Chapter 2301, Subchapter M or §2301.204 case in which a hearing is held and a copy of the order will be sent to all parties.

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## SUBCHAPTER H. ADVERTISING

**43 TAC §§8.241 - 8.271**

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §§2301.005, 2301.155, 2301.602, and Transportation Code, §503.002, which authorize the commission to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, and §2301.476; Transportation Code, §§501.0234, 503.039, 503.061-503.071.

*§8.245. Availability of Vehicles.*

(a) A licensee may advertise a specific vehicle or line make of vehicles for sale if:

(1) the specific vehicle or line is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is clearly and conspicuously disclosed in the advertisement; and

(2) the price advertisement sets forth the number of vehicles available at the time the advertisement is placed or a dealer can show he has available a reasonable expectable public demand based on prior experience. In addition, if an advertisement pertains to only one specific vehicle, then the advertisement must also disclose the vehicle's stock number or vehicle identification number.

(b) This section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

(c) Motor vehicle dealers may advertise a specific used vehicle or vehicles for sale if:

(1) The specific used vehicle or vehicles is in the possession of the dealer at the time the advertisement is placed; and

(2) The title certificate to the used vehicle has been assigned to the dealer.

*§8.247. Untrue Claims.*

The following statements are prohibited.

(1) Statements such as "write your own deal," "name your own price," "name your own monthly payments," or statements with similar meaning.

(2) Statements such as "everybody financed," "no credit rejected," "we finance anyone," and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants greater allowances for trade-ins, however stated, unless the dealer can show such is the case.

(4) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer selling the same make of vehicles, unless the dealer can show such is the case.

*§8.248. Layout.*

The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered for sale or lease at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

*§8.254. Used Vehicles.*

A used vehicle shall not be advertised in any manner that creates the impression that it is new. A used vehicle shall be identified as either "used" or "pre-owned." Terms such as "program car," "special purchase," "factory repurchase," or other similar terms are not sufficient to designate a vehicle as used, and these vehicles must be identified as "used" or "pre-owned."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 17. VEHICLE TITLES AND REGISTRATION

The Texas Department of Transportation (department) adopts amendments to §17.2 and §17.3, concerning Motor Vehicle Certificates of Title, §§17.21 - 17.24, 17.28, 17.30, 17.33, and 17.36, concerning Motor Vehicle Registration, §17.54, concerning Automated Equipment, §§17.61, 17.62, 17.65, and 17.68, concerning Nonrepairable and Salvage Motor Vehicles, and §§17.72, 17.73 and 17.79, concerning Salvage Vehicle Dealers. The amendments to §17.3 and §17.68 are adopted with changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 4920). Section 17.3 is being adopted with changes to correct a minor reference to subsection (b)(1). The amendments to §§17.2, 17.21 - 17.24, 17.28, 17.30, 17.33, 17.36, 17.54, 17.61, 17.62, 17.65, 17.72, 17.73, and 17.79 are adopted without changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 4920) and will not be republished. It should be noted that the published version of §17.28(e) omitted paragraph (3), which had no changes.

EXPLANATION OF ADOPTED AMENDMENTS

The 79th Legislature, 2005, passed various legislation relating to motor vehicle certificates of title and registration. House Bill 749 expanded the uses of vehicles displaying "Cotton Vehicle" license plates to allow for transportation of chile peppers and chile pepper transporting or processing equipment. House Bill 988 provided that licensed motor vehicle dealers are required to file applications for certificates of title in the county selected by the purchaser. House Bill 1244 authorized the department to issue "Classic Travel Trailer" license plates. House Bill 1350 amended the definition of a "salvage motor vehicle." House Bill 1646 amended the definition of "motor vehicle" and the definition of "all-terrain vehicle." House Bill 2894 amended the provisions relating to marketing of specialty license plates through a private vendor.

The adopted rules include clarifications of current policies. The department has updated procedures on destruction of valid license plates, tow truck registration, vehicle verification for vehicles entering the country and the transfer of vehicle titles.

House Bill 2971, 78th Legislature, 2003, recodified all provisions relating to issuance of specialty license plates. These provisions are now codified in Transportation Code, Chapter 504. Throughout the adopted rules, citations are corrected to reflect the appropriate Chapter 504 citation. The adopted rules also include corrections of additional citations to correspond with other statutory revisions, and nonsubstantive changes in language to correct terminology and enhance readability.

Section 17.2(22), definition of "motor vehicle," is amended as a result of the provisions of House Bill 1646 by deleting "4-wheel" in relation to the number of wheels an all-terrain vehicle may have.

Section 17.3(a), Certificates of Title, is amended to correct statutory citations and to correct terminology. "Motor" is added to correspond with terminology used in Transportation Code, Chapter 501, Certificate of Title Act.

Section 17.3(b)(1), Place of application, is amended, pursuant to House Bill 988, to require a licensed motor vehicle dealer to file an application for certificate of title in the county in which the

purchaser resides, or where the vehicle is sold or encumbered, as selected by the buyer.

Section 17.3(c)(3), Motor vehicles brought into the United States, is amended by adding new subparagraph (B) and is renumbered accordingly. New subparagraph (B) is added to clarify the existing requirement for submission of a verification of the vehicle identification number with an application for title for a motor vehicle brought into the United States. The verification must be on a form provided by the department and executed by a member of the National Crime Insurance Bureau, the Federal Bureau of Investigation, or a law enforcement auto theft unit. The purpose of this requirement is to aid in the prevention of trafficking stolen vehicles in Texas.

Section 17.3(f), Department notification of second hand vehicle transfers, is amended for clarification. Paragraph (2), Records, is amended to clarify that the department maintains a record of the information provided on the written notice of transfer, but does not mark the automated motor vehicle record to indicate the full name and address of the transferee.

The definition of cotton vehicle is added as §17.21(13), to clarify that cotton vehicles may transport chili pepper modules and equipment used in transporting or processing chili peppers, as well as seed cotton, cotton, cotton burrs, or cotton equipment, as added by House Bill 749. Subsequent paragraphs are renumbered accordingly.

Renumbered §17.21(35), Nonprofit organization, is amended to correct the citation. The Business Organizations Code becomes effective January 1, 2006.

Renumbered §17.21(44), Special category license plate, §17.21(45), Special category license plate fee, and §17.21(47), Sponsoring entity, are amended to correct terminology. The term "special category" has been changed to "specialty" throughout these paragraphs and §17.30 to be consistent with terminology used in Transportation Code, Chapter 504 and §17.28 of this title.

Section 17.22(a), Registration, is amended to update the administrative rule citation to correctly state that the provisions for nonrepairable or salvage vehicle title issuance and registration of nonrepairable motor vehicles is addressed in Subchapter D of this chapter.

Section 17.22(b), Initial application for vehicle registration, is amended to correct terminology in paragraph (2)(A) by adding "nonrepairable or" in relation to registration of a motor vehicle.

Section 17.22(d)(3) is also amended to change the term "must" to "should" relating to the return of a license plate renewal notice. Although return of the license plate renewal notice is preferred, a vehicle owner may renew registration without a renewal notice.

Section 17.23(c)(3)(B) is amended to state the required format for evidence of financial responsibility required from a motor carrier.

Section 17.24(c)(2), Application form, is amended to match statutory language, by deleting the requirement for disclosure of an applicant's entire driver's license or number of the applicant's personal identification card, and requiring only the first four digits of the number.

Section 17.28(c)(2), Number of plates issued, is amended by adding new (B)(ii) to clarify that only one classic travel trailer license plate will be issued to a vehicle eligible to receive that license plate as a result of enactment of House Bill 1244. Subsequent clauses are renumbered accordingly.

Section 17.28(e)(1)(B)(iii), Non-transferable between vehicles, is amended to clarify that classic travel trailer license plates issued as a result of House Bill 1244 are non-transferable between vehicles. A classic travel trailer license plate is issued for use only on a specific travel trailer that has met the criteria provided in House Bill 1244. A new application is required for each travel trailer for which a classic travel trailer license plate is requested to determine eligibility for the license plate. House Bill 1244 did not provide a statutory exemption allowing a classic travel trailer license plate to be transferred between vehicles.

Section 17.28(j), Marketing of specialty license plates through a private vendor, is amended to be consistent with the language of House Bill 2894. In addition to the adopted changes necessary to address statutory revisions, this section is also amended to clarify that a private vendor may agree to market and sell existing "non-qualifying" specialty license plates only. Examples of "qualifying" license plates that will not be marketed or sold under the vendor contract include certain military license plates, plates with restricted distribution (state official, county judge), and plates that are restricted to a certain type of vehicle.

Section 17.30(b)(3), Combination license plates, is amended to clarify current policy by adding that a vehicle registered with combination license plates is required to display only one license plate on the front of the vehicle.

Section 17.30(b)(4) and(5) is amended to correct terminology and to update statutory citations. The term "special category" has been changed to "specialty" to be consistent with terminology used in Transportation Code, Chapter 504 and §17.28 of this title.

Section 17.30(b)(6), Intransit license plates, §17.30(d)(1)(A), March expiration, and §17.30(f), Replacement of lost, stolen, or mutilated commercial vehicle license plates, are corrected to be consistent with statutory language. "Intransit" has been changed to "In Transit" to be consistent with language used in Transportation Code, Chapter 503, and with the legend indicated on the In Transit license plate.

Section 17.30(d)(1), Registration period, is amended by adding new (B)(ii) to clarify that Rental Trailer license plates will be issued for a five-year period with a March 31st expiration date for rental trailers that are part of a rental fleet, as defined in Transportation Code, §501.166. The Rental Trailer classification was previously omitted. The subsequent clause is renumbered accordingly.

Section 17.30(d)(3), Return of License Plate Renewal Notice, is amended to change the term "must" to "should" to be consistent with the changes to §17.22(d)(3).

Section 17.30(f), Replacement of lost, stolen, or mutilated commercial vehicle license plates, is amended to delete an incorrect provision that replacement Tow Truck license plates may not be issued. In 1997, the department began issuing standard-sized tow truck license plates for registration of Texas tow trucks in lieu of regular truck license plates and a smaller Tow Truck tag. Prior to this date, if the smaller Tow Truck tag was lost, stolen, or mutilated, the owner was required to pay a $15 fee to obtain a new, smaller Tow Truck tag since the tag was not considered "registration." This section is corrected to clarify that replacement Tow Truck license plates may now be issued upon payment of the statutory $5.30 registration replacement fee.

Section 17.33, Registration Fee Credit: Nontransferable, is amended to correct the name of the division that maintains registration and title records from "Motor Vehicle Division" to "Vehicle Titles and Registration Division."

Section 17.36, Water Well Drilling Equipment, is amended to correct the name of the licensing agency to the Texas Department of Licensing and Regulation to be consistent with the provisions of Occupations Code, §1902.001.

Section 17.54(c), is amended to clarify that the criteria for collection of the additional fee for the automated registration and title system is 50,000 "or more" annual registrations, as provided for in Transportation Code, §502.1705.

Section 17.54(c) is also amended by deleting the reference in paragraph (2) to the "Allocation of Vehicle Registration Fees report for each calendar year." Deleting this reference eliminates the restriction of using only this one report. Other reports are available to the department that more accurately reflect the volume of registrations to identify which counties meet the criteria of 50,000 or more annual registrations.

Section 17.61(19), Salvage motor vehicle, is amended to be consistent with Transportation Code, §501.091, and to clarify that a salvage motor vehicle includes a vehicle that is missing a major component part, and that the cost of repairs does not include materials and labor for repainting or sales tax on the cost of the repairs, as provided for in House Bill 1350.

Section 17.62(a), Determination of condition of vehicle, is reformatted and amended by adding new paragraph (5) to provide new exemptions from the estimated cost of repair calculations for a damaged vehicle as provided by House Bill 1350. The cost of repairs does not include the costs of materials or labor for repainting the motor vehicle, or sales tax on the total cost of repairs.

Additionally, §17.62(a), paragraphs (1), (2), and (4), are amended by deleting the term "estimated" relating to the cost of repairs of a damaged vehicle to be consistent with Transportation Code, §501.091. House Bill 3588, passed by the 78th Legislature, 2003, amended the definition of "salvage motor vehicle" and "nonrepairable motor vehicle." The amended definitions do not include the term "estimated."

Section 17.65, Dismantling, Scrapping, or Destruction of Motor Vehicles, is amended by adding new subsection (b)(2) to clarify that unexpired license plates and registration validation stickers removed from vehicles that are to be dismantled, scrapped, or destroyed must be stored in a secure location.

Section 17.65 is also amended by adding new subsection (d) to clarify current policy that provides a person may destroy unexpired license plates and registration validation stickers once the person receives acknowledgment from the department that the department has received the surrendered evidence of ownership for the applicable vehicle. Subsequent subsections are renumbered accordingly.

Section 17.68(c), Fee for rebuilt salvage certificate of title, is amended to correct the administrative rule citation. A $65 rebuilt salvage fee must accompany an application for a Rebuilt Salvage Certificate of Title unless the applicant provides the written statement explained in §17.68(d)(3)(B).

Section 17.72(c)(4) is amended to correct grammar.

Section 17.73(b), Initial application, is amended by adding the term "legal" to paragraphs (1)(A), (2)(A)(x), and (3)(I). This change is made to clarify the current requirement that an individual applicant, corporate officer or director, or an owner or partner of a partnership, provide their legal name on the application for a salvage vehicle dealer license. This requirement is necessary in order to investigate and conduct criminal background checks on applicants as provided for in §17.75(a) of this chapter.

Section 17.73(b)(1), Form of application for salvage vehicle dealer license, is amended by adding new subparagraph (G) to clarify the current requirement that an individual applicant for a salvage vehicle dealer license must include the applicant's date of birth. This information is necessary to investigate and conduct criminal background checks on applicants as provided for in §17.75(a) of this chapter. Subsequent subparagraphs are renumbered accordingly.

Section 17.79(b), Dismantled, scrapped, or destroyed motor vehicle, is amended to be consistent with the changes in §17.65.

COMMENTS

No comments on the proposed amendments were received. However, the word "or" in the proposed version of §17.68(d)(2)(E) was inadvertently struck through as if it were being deleted. It has now been corrected.

## SUBCHAPTER A. MOTOR VEHICLE CERTIFICATES OF TITLE

**43 TAC §17.2, §17.3**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

*§17.3. Motor Vehicle Certificates of Title.*

(a) Certificates of title. Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas certificate of title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle are the same requirements prescribed for any motor vehicle.

(B) A motorcycle, motor-driven cycle, or moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until the unit is registered.

(C) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.202, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.201.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §504.504, may be issued Texas certificates of title.

(3) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates and permit license plates in accordance with Transportation Code, §504.504; and

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.163, with the exception of farm semitrailers with a gross weight of more than 4,000 pounds as referenced in subsection (a)(2)(D) of this section.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas certificate of title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any semitrailer having a gross weight in excess of 4,000 pounds. Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §504.504, may be issued Texas certificates of title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for a trailer or semitrailer, the rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

*(i)* A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a mobile home and is titled under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, administered by the Texas Department of Housing and Community Affairs.

*(ii)* A house trailer-type vehicle that is less than eight feet in width and less than forty feet in length is classified as a travel trailer and shall be registered and titled.

*(iii)* A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(b) Initial application for certificate of title.

(1) Place of application. When motor vehicle ownership is transferred, except as provided by Transportation Code, Chapters 501 and 502 and by §17.63(a) of this chapter, a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant.

(2) Information to be included on application. An applicant for an initial certificate of title must file an application on a form prescribed by the department. The form will at a minimum require the:

(A) motor vehicle description including, but not limited to, the motor vehicle's:

*(i)* year;

*(ii)* make;

*(iii)* model;

*(iv)* identification number;

*(v)* body style;

*(vi)* manufacturer's rated carrying capacity in tons for commercial motor vehicles; and

*(vii)* empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed;

(H) signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed; and

(I) applicant's social security number, if the application is filed in a county in which the department's automated registration and title system has been implemented, with the following exceptions:

*(i)* an application filed in the name of an entity that does not have a social security number, or

*(ii)* an individual applicant who does not have a social security number, in which case the applicant must execute a statement to that effect on a form prescribed by the department.

(3) Serial number. If no serial number is die-stamped by the manufacturer on a motor vehicle, house trailer, trailer, semitrailer, or item of equipment required to be titled, or if the serial number assigned and die-stamped by the manufacturer has been lost, removed, or obliterated, the department will on proper application, presentation of evidence of ownership, and presentation of evidence of a law enforcement physical inspection, assign a serial number to the motor vehicle, trailer, or equipment. The manufacturer's serial number or the assigned serial number will be used by the department as the major identification of the motor vehicle or trailer in the issuance of a certificate of title.

(4) Accompanying documentation. The certificate of title application must be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.153, unless otherwise exempted by law; and

(D) an identification certificate if required by Transportation Code, §548.256, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only; and

(E) a release of any liens, provided that if any liens are not released, they will be carried forward on the new certificate of title application with the following limitations.

*(i)* A lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

*(ii)* A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant must accompany the certificate of title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the division director and must contain, at a minimum, the following information:

*(i)* motor vehicle description including, but not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

*(ii)* the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502; and

*(iii)* a statement identifying a motor vehicle designed by the manufacturer for off-highway use only.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A certificate of title issued by the department, a certificate of title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the certificate of title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Motor vehicles brought into the United States. An application for certificate of title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

*(i)* the National Insurance Crime Bureau;

*(ii)* the Federal Bureau of Investigation; or

*(iii)* a law enforcement auto theft unit; and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations, including, but not limited to, the following documents:

*(i)* the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

*(ii)* a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

*(iii)* a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

*(iv)* a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

*(v)* the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

*(vi)* verification from the vehicle manufacturer on its letterhead stationary.

(4) Alterations to documentation. An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(B) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(C) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

*(i)* incomplete or altered vehicle identification number;

*(ii)* alteration or strikeover of the vehicle's model year;

*(iii)* alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

*(iv)* alteration or strikeover to the manufacturer's rated carrying capacity.

(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

*(i)* in which the date of sale on an assignment has been erased or altered in any manner; or

*(ii)* of alteration or erasure on a Dealer's Reassignment of Title.

(5) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(d) Certificate of title issuance. On receiving a completed application for certificate of title, along with the statutory fee for a title application and any other applicable fees, the department or its designated agent will issue a receipt and process the application for certificate of title.

(1) Titles. The department will issue and mail or deliver a certificate of title to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(2) Receipt. The receipt issued at the time of application for title may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle or to establish a new lien.

(e) Replacement of certificate of title. If a certificate of title is lost or destroyed, the department will issue a certified copy of the title to the owner, the lienholder, or a verified agent of the owner or lienholder in accordance with Transportation Code, Chapter 501, on proper application and payment of the appropriate fee to the department.

(1) Certified copy.

(A) Issuance. An application for a certified copy must be properly executed and supported by appropriate verifiable proof for the vehicle owner, lienholder, or agent regardless of whether the application is submitted in person or by mail.

*(i)* If the applicant requests that a certified copy be issued before the fourth business day following application, the application must be made in person.

*(ii)* An applicant other than the vehicle owner, lienholder, or verified agent must apply for a certified copy of a certificate of title by mail.

(B) Denial. If issuance of a certified copy is denied, the applicant may resubmit the request with the required verifiable proof or may pursue the privileges available in subsection (g)(2)(A) and (B) of this section.

(2) Certified copy designation. A certified copy of an existing certificate of title will be marked "Certified Copy" until ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new certificate of title.

(3) Fees. The fee for obtaining a certified copy of a certificate of title is $2.00 if the application is processed at the department's headquarters office and $5.45 if the application is processed at one of the department's regional offices.

(f) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, Chapter 520, Subchapter C, and this subsection.

(1) Notification form. The department will provide a form for written notice of transfer. The form will include the:

(A) vehicle identification number of the vehicle;

(B) license plate number issued to the vehicle, if any;

(C) full name and address of the transferor;

(D) full name and address of the transferee;

(E) date the transferor delivered possession of the vehicle to the transferee;

(F) signature of the transferor; and

(G) date the transferor signed the form.

(2) Records. On receipt of written notice of transfer and a $5.00 fee from the transferor of a motor vehicle, the department will mark its records to indicate the date of transfer and will maintain a record of the information provided on the written notice of transfer.

(3) Ownership of transferred vehicle. After the date of the transfer of the vehicle as shown in the department records, the transferee of the vehicle is rebuttably presumed to be:

(A) the owner of the vehicle; and

(B) subject to civil and criminal liability arising out of the use, operation, or abandonment of the vehicle, to the extent that ownership of the vehicle subjects the owner of the vehicle to criminal or civil liability under another provision of the law.

(4) Certificate of title issuance. A certificate of title will not be issued in the name of a transferee until the transferee files an application for the certificate of title as described in this section.

(g) Suspension, revocation, or refusal to issue Certificates of Title.

(1) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, will suspend or revoke the certificate of title if the:

(A) application contains any false or fraudulent statement;

(B) applicant has failed to furnish required information requested by the department;

(C) applicant is not entitled to the issuance of a certificate of title under Transportation Code, Chapter 501;

(D) department has reasonable grounds to believe that the vehicle is a stolen or converted vehicle or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a lienholder;

(E) registration of the vehicle stands suspended or revoked; or

(F) required fee has not been paid.

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest the department's decision in accordance with Transportation Code, §501.052 and §501.053, in the following manner.

(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply for a hearing to the designated agent of the county in which the applicant resides. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the County Court of the county in which the applicant resides.

(B) Alternative to hearing. In lieu of a hearing, any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked a certificate of title may file a bond with the department, in an amount equal to one and one-half times the value of the vehicle as determined by the department, and in a form prescribed by the department. On the filing of the bond, the department may issue a certificate of title. The bond shall expire three years after the date it becomes effective and will be returned to the person posting bond, on expiration, unless the department has been notified of the pendency of an action to recover on the bond.

(h) Discharge of lien. A lienholder shall provide the owner, or the owner's designee, a discharge of the lien after receipt of the final payment within the time limits specified in Transportation Code, Chapter 501. The lienholder shall submit one of the following documents:

(1) the certificate of title including an authorized signature in the space reserved for release of lien;

(2) a release of lien form prescribed by the department, with the form filled out to include the:

(A) certificate of title or document number, or a description of the motor vehicle including, but not limited to, the motor vehicle's:

*(i)* year;

*(ii)* make;

*(iii)* vehicle identification number; and

*(iv)* license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(B) printed name of lienholder;

(C) signature of lienholder or an authorized agent;

(D) printed name of the authorized agent if the agent's signature is shown;

(E) telephone number of lienholder; and

(F) date signed by the lienholder;

(3) signed and dated correspondence submitted on company letterhead that includes:

(A) a statement that the lien has been paid;

(B) a description of the vehicle as indicated in paragraph (2)(A) of this subsection;

(C) a certificate of title or document number; or

(D) lien information;

(4) any out-of-state prescribed release of lien form, including an executed release on a lien entry form;

(5) out-of-state evidence with the word "Paid" or "Lien Satisfied" stamped or written in longhand on the face, followed by the name of the lienholder, countersigned or initialed by an agent, and dated; or

(6) original security agreements or copies of the original security agreements if the originals or copies are stamped "Paid" or "Lien Satisfied" with a company paid stamp or if they contain a statement in longhand that the lien has been paid followed by the company's name.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Transportation
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## SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

**43 TAC §§17.21 - 17.24, 17.28, 17.30, 17.33, 17.36**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

### 43 TAC §17.54

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

### 43 TAC §§17.61, 17.62, 17.65, 17.68

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

*§17.68. Rebuilt Salvage Motor Vehicles.*

(a) Filing for title. When a salvage motor vehicle or a nonrepairable motor vehicle for which a nonrepairable vehicle title was issued prior to September 1, 2003, has been rebuilt, the owner shall file a certificate of title application, as described in §17.3 of this chapter (relating to Motor Vehicle Certificates of Title), for a rebuilt salvage certificate of title.

(b) Place of application. An application for a rebuilt salvage certificate of title shall be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or is encumbered.

(c) Fee for rebuilt salvage certificate of title. In addition to the statutory fee for a title application and any other applicable fees, a $65 rebuilt salvage fee must accompany the application, unless the applicant provides the evidence described in subsection (d)(3)(B) of this section.

(d) Accompanying documentation. The application for a certificate of title for a rebuilt nonrepairable or salvage motor vehicle must be supported, at a minimum, by the following documents:

(1) evidence of ownership, properly assigned to the applicant, as described in subsection (e) of this section;

(2) a rebuilt affidavit, on a notarized form prescribed by the department that includes:

(A) a description of the motor vehicle, which includes the motor vehicle's model year, make, model, identification number, and body style;

(B) an explanation of the repairs or alterations made to the motor vehicle;

(C) a description of each major component part used to repair the motor vehicle and showing the identification number required by federal law to be affixed to or inscribed on the part;

(D) the name and address of the owner;

(E) the signature of the owner, or the owner's authorized agent; and

(F) certification by the applicant that the vehicle identification number disclosed on the rebuilt affidavit is the same as the vehicle identification number affixed to the vehicle;

(3) evidence of inspection submitted by the person who repairs, rebuilds, or reconstructs a nonrepairable or salvage motor vehicle in the form of:

(A) disclosure on the rebuilt affidavit of the vehicle inspection sticker number, and date of expiration, issued by an authorized state safety inspection station after the motor vehicle was rebuilt, if the motor vehicle will be registered at the time of application; or

(B) a written statement, executed by a specially trained commissioned officer of the Department of Public Safety prior to September 1, 2003, certifying that the rebuilt nonrepairable or salvage motor vehicle's parts and identification numbers have been inspected and that the vehicle complies with state safety standards;

(4) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(5) proof of financial responsibility in the title applicant's name, as required by Transportation Code, §502.153, unless otherwise exempted by law;

(6) the identification certificate required by Transportation Code, §548.256, and Transportation Code, §501.030, if the motor vehicle was last titled and registered in another state or country, unless otherwise exempted by law; and

(7) a release of any liens, unless there is no transfer of ownership and the same lienholder is being recorded as is recorded on the surrendered evidence of ownership.

(e) Evidence of ownership of a rebuilt salvage motor vehicle:

(1) may include:

(A) a Texas Salvage Vehicle Title;

(B) a Texas Nonrepairable Certificate of Title issued prior to September 1, 2003;

(C) a Texas Salvage Certificate; or

(D) a comparable salvage certificate or salvage certificate of title issued by another jurisdiction, except that this ownership document will not be accepted if it indicates that the motor vehicle may not be rebuilt in the jurisdiction that issued the ownership document; but

(2) may not include:

(A) a Texas nonrepairable vehicle title issued on or after September 1, 2003;

(B) an out-of-state ownership document that indicates that the motor vehicle is nonrepairable, junked, for parts or dismantling only, or the motor vehicle may not be rebuilt in the jurisdiction that issued the ownership document; or

(C) a certificate of authority to dispose of a motor vehicle issued in accordance with Transportation Code, Chapter 683.

(f) Rebuilt salvage certificate of title issuance. Upon receiving a completed certificate of title application for a rebuilt salvage motor vehicle, along with the applicable fees and required documentation, the transaction will be processed and a rebuilt salvage certificate of title will be issued. The certificate of title will include a "Rebuilt Salvage" notation and a description or disclosure of the motor vehicle's former condition on its face.

(g) Issuance of rebuilt salvage certificate of title to a motor vehicle from another jurisdiction. On proper application, as prescribed by §17.3 of this chapter (relating to Motor Vehicle Certificates of Title), by the owner of a motor vehicle that is brought into this state from another jurisdiction and for which a certificate of title issued by the other jurisdiction contains a "Rebuilt," "Salvage," or analogous title remark, the department will issue the applicant a certificate of title or other appropriate document for the motor vehicle. A certificate of title or other appropriate document issued under this subsection will show on its face:

(1) the date of issuance;

(2) the name and address of the owner;

(3) any registration number assigned to the motor vehicle;

(4) a description of the motor vehicle as determined by the department; and

(5) any title remark the department considers necessary or appropriate.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. SALVAGE VEHICLE DEALERS

**43 TAC §§17.72, 17.73, 17.79**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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# CHAPTER 21. RIGHT OF WAY

## SUBCHAPTER N. RAIL FACILITIES

**43 TAC §21.801, §21.802**

The Texas Department of Transportation (department) adopts new §21.801 and §21.802, concerning acquisition and disposal of real property for rail facilities. New §21.801 and §21.802 are adopted without changes to the proposed text as published in

the November 11, 2005, issue of the *Texas Register* (30 TexReg 7412) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

Transportation Code, Chapter 91, Subchapter E authorizes the Texas Transportation Commission (commission) to acquire a right-of-way, a property right, or other interest in real property determined to be necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities, and to sell, convey, or otherwise dispose of any rights or other interests in real property determined to no longer be needed for department purposes. The new sections establish procedures for the implementation and administration of Transportation Code, Chapter 91, Subchapter E.

Section 21.801(a) adopts for rail facilities the same acquisition procedures that currently apply to highways as set forth in 43 TAC Chapter 21, Subchapter A (relating to Land Acquisition Procedures), Subchapter D (relating to Expenses Incidental to Transfer of Title To State), and Subchapter G (relating to Relocation Assistance and Benefits).

Section 21.801(b) describes the requirements for purchasing property along alternative potential routes for a rail facility even if only one of those potential routes will ultimately be chosen as the final route. Specifically, §21.801(b) provides for a two-step process. In the first step, the commission must authorize the acquisition along alternative potential routes. The second step requires the district engineer to analyze the particular property to be acquired in relation to the needs and conditions of the specific rail facility. The district engineer must find that the property may possibly be used in connection with the proposed rail facility. In addition, the district engineer must determine that the size and location of the property is reasonably related to the facility's possible design and alignment and that the acquisition may be economically beneficial to the department by preserving undeveloped or underdeveloped property for a rail corridor. These additional requirements seek to provide justification for the acquisition along alternative routes by the person in a district who has the most complete overview and control of the project.

Section 21.801(c) clarifies that the department can use the services of a right of way acquisition provider under comprehensive development agreements and pass-through fare agreements.

Section 21.802(a) adopts for rail facilities the same disposal of real property procedures for sale by sealed bid that currently apply to property that was acquired for highway purposes as set forth in 43 TAC Chapter 21, Subchapter F (relating to Disposal of Real Estate Interests).

Section 21.802(b) creates priorities for sale of rail facility real property interests. They are similar to the priorities created by Transportation Code, §202.021, for the sale of property acquired for highway purposes. The primary difference is an equal first priority for both operating railroad companies and governmental entities with the authority to condemn. This is designed to maximize the potential for preserving rail facilities after such use is surplus to the department's needs.

Section 21.802(c) provides that the priorities will not apply in an exchange situation in order to allow for flexibility in the use of surplus department property as consideration for acquiring other needed real property.

Section 21.802(d) authorizes the commission to consider the cost of future maintenance as fair value consideration for the transfer of real property to another governmental entity. This is in lieu of monetary payment and is similar to the authority created by Transportation Code, §202.021, for the sale of property acquired for highway purposes.

Section 21.802(e) directs the revenue from the sale of rail facility property to be deposited to the credit of the state highway fund. This is similar to the requirement created by Transportation Code, §202.021, for the sale of property acquired for highway purposes.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.003, which authorizes the commission to adopt rules necessary to implement Chapter 91.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 91, Subchapter E.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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# CHAPTER 23. TRAVEL INFORMATION

## SUBCHAPTER B. TRAVEL INFORMATION

### 43 TAC §23.13

The Texas Department of Transportation (department) adopts new §23.13, concerning links to community web sites from rest areas and travel information centers. New §23.13 is adopted without changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7414) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

Section 23.13(a) describes the purpose of the section, which is to establish policies and procedures governing the participation of communities and the approval by the department of web sites that may link to the department's wireless internet access web pages from rest areas and travel information centers.

Section 23.13(b) describes how a city or town may submit a request for approval of a web site link and requires contact information for two official representatives of the city or town.

Section 23.13(c) describes the department's approval process. First, the city or town must already be included on the Texas Official Travel Map. The subsection contains this restriction because

the department is using the current travel map and its database of communities to develop the wi-fi maps that can be seen on the web site and because, typically, a location that is not on the travel map has few amenities for a traveler. Second, to help ensure consistency and accuracy, the web site must be considered the official site of the city, town, or region, and be advertised as the official site in the community's tourism information.

Section 23.13(d) defines the restrictions related to a web site. The purpose of linking to web sites is to provide travel and tourism information to the traveling public and to promote the positive attributes of the state. Accordingly, subjects for web site content that include sexually-oriented products or services will not be considered, nor will web site information that discriminates against individuals on the basis of race, color, creed, religion, sex, or national origin.

To ensure the integrity of the program, §23.13(e) describes the procedures for removal of the web site link based on the department's receipt of three or more consumer complaints concerning inaccurate information or information prohibited under §23.13(d).

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Richard D. Monroe
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## CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Transportation (department) adopts amendments to §§28.11, 28.14, 28.15, 28.92, and new Subchapter H, Chambers County Permits, §§28.100 - 28.102, concerning oversize and overweight vehicles and loads. The amendments to §§28.11, 28.14, 28.15, 28.92 and new §§28.100 - 28.102 are adopted without changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7415) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

The adopted amendments and new sections are necessary to implement the provisions of House Bill 1044, House Bill 2438, and Senate Bill 1641, 79th Legislature, Regular Session, 2005, and to clarify existing information.

House Bill 1044 amended Transportation Code, Chapter 623, by adding §623.250 to authorize Chambers County, Texas, to issue permits for the movement of loaded oversize/overweight vehicles weighing up to 100,000 pounds only on Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park.

House Bill 2438 amended Transportation Code, Chapter 623, by repealing §623.093(d), removing the requirement for certain manufactured housing permit applications to be accompanied by proof that ad valorem taxes have been paid.

Senate Bill 1641 amended Transportation Code, Chapter 623, by extending the expiration date of the Port of Brownsville Permit Program defined in §623.219.

Additional amendments are adopted to clarify escort vehicle requirements to ensure consistency in escort vehicle equipment. Amendments to surety bond requirements are adopted to ensure that motor carriers hauling oversize/overweight loads are in compliance with motor carrier registration requirements.

Section 28.11. General Oversize/Overweight Permit Requirements and Procedures.

Adopted changes to §28.11(b)(1), clarify when a surety bond is and is not acceptable in lieu of motor carrier registration when applying for an oversize/overweight permit. This will assist in ensuring that motor carriers hauling oversize/overweight loads are in compliance with financial responsibility requirements. Section 28.11(b)(1) states that a surety bond can only be used if the entity is not required to register as a motor carrier. This amendment will help ensure the safety of the traveling public and will help ensure the integrity of the highway infrastructure.

Adopted changes to §28.11(k)(7)(A), state that escort vehicles must be a single unit within a specific weight range. This addition will help clarify what vehicle type can and cannot be used as an escort vehicle. Section 28.11(k)(7)(C) requires escort vehicles to display sign(s) with "OVERSIZE LOAD" or "WIDE LOAD"; "WIDE LOAD" has been added to allow for consistency in industry standards. Section 28.11(k)(7)(D) requires the escort vehicle to maintain two-way "radio" communications; "radio" has been removed to allow for other means of communication, such as cell phone. These amendments clarify the equipment requirements for escort vehicles assisting with the transport of oversize/overweight loads. These amendments will help ensure the safety of the traveling public.

Section 28.14. Manufactured Housing, and Industrialized Housing and Building Permits.

Adopted amendments to §28.14(b)(3) comply with House Bill 2438, 79th Legislature, Regular Session, 2005, which repealed §623.093(d), eliminating the requirement for certain manufactured housing permit applications to be accompanied by proof that ad valorem taxes have been paid. This repeal will allow the department to more effectively and efficiently administer Transportation Code, Chapter 623, Subchapter E.

Adopted amendments to §28.14(f)(4)(A)-(D) and §28.14(f)(6) clarify the equipment requirements for escort vehicles assisting with the transport of manufactured housing. These amendments

are added for consistency to ensure that all escort vehicles meet the same general requirements.

Section 28.15. Portable Building Unit Permits.

Adopted amendments to §28.15(f)(3)(D) and §28.15(f)(4) clarify the equipment requirements for escort vehicles assisting with the transport of portable buildings. These amendments are added for consistency to ensure that all escort vehicles meet the same general requirements.

Section 28.92 Permit Issuance Requirements and Procedures.

Adopted amendments to §28.92(b)(3) define reporting requirements for the Port of Brownsville Permit Program. This requires the permitting authority to provide monthly and annual reports. This will ensure compliance with Transportation Code, §623.215.

Section 28.92(h)(7) is amended to extend the expiration date of the Port of Brownsville Permit Program to June 1, 2009, to ensure compliance with Senate Bill 1641, 79th Legislature, Regular Session, 2005.

Subchapter H. Chambers County Permits.

Adopted amendments to Chapter 28 include the addition of Subchapter H, to comply with the requirements of House Bill 1044, 79th Legislature, Regular Session, 2005. This subchapter was developed to be consistent with similar programs previously established.

Adopted §28.100 defines the purpose of Subchapter H, which allows Chambers County, Texas, to issue permits for the movement of loaded oversize/overweight vehicles weighing up to 100,000 pounds only on Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park.

Adopted §28.101 defines the responsibilities of Chambers County, Texas and the department for the implementation and oversight of the Chambers County Permit Program. Areas of responsibility included in the adopted addition are (1) surety bond; (2) verification of permits; (3) training; (4) accounting; (5) audits; (6) revocation of authority to issue permits; (7) fees; (8) maintenance contract; and (9) reporting. These areas were developed to be in compliance with Transportation Code, Chapter 623, Subchapter M and to be consistent with similar programs previously established.

Adopted §28.102 establishes the permit issuance requirements and procedures that Chambers County, Texas must follow as part of the Chambers County Permit Program. Requirements and procedures included in the adopted addition are (1) permit application; (2) permit issuance; (3) maximum permit weight limits; (4) vehicles exceeding weight limits; (5) registration; (6) travel conditions; (7) daylight and night movement restrictions; and (8) restrictions. These areas were developed to be in compliance with Transportation Code, Chapter 623, Subchapter M, and to be consistent with similar programs previously established.

COMMENTS

No comments on the proposed amendments and new sections were received.

## SUBCHAPTER B. GENERAL PERMITS

**43 TAC §§28.11, 28.14, 28.15**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.215, and §623.250.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Richard D. Monroe
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## SUBCHAPTER G. PORT OF BROWNSVILLE PORT AUTHORITY PERMITS

**43 TAC §28.92**

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.215, and §623.250.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. CHAMBERS COUNTY PERMITS

**43 TAC §§28.100 - 28.102**

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.215, and §623.250.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 43 TAC §8.138(b)(1)
Appendix A-1

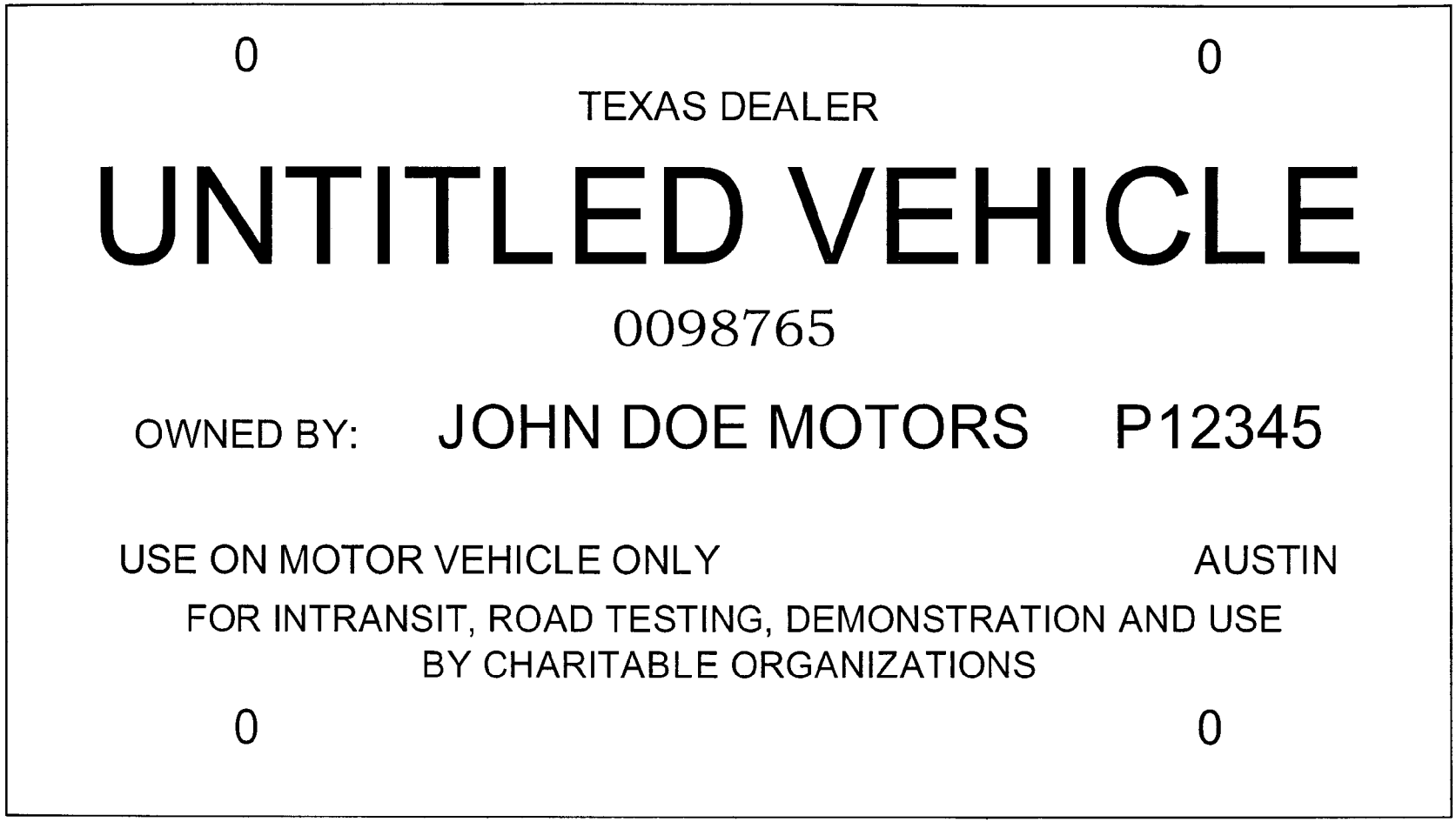


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Figure 2: 43 TAC §8.138(b)(1)

APPENDIX A-2

# DEALER TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE

## INSTRUCTIONS TO DEALER

The black dealer temporary cardboard tag may be used by the dealer to demonstrate or cause to be demonstrated his/her untitled vehicles only to prospective buyers, or on vehicles loaned to charitable organizations.

The dealer temporary tag shall not be used to operate vehicles for the personal use of a dealer or his/her employees and shall not be used on commercial vehicles when carrying a load.

This tag may also be used to convey or cause to be conveyed a dealer's untitled vehicles from his/her place of business in one part of the state to his/her place of business in another part of the state, or from his/her place of business to a place to be repaired, reconditioned, or serviced, or from the point in this state where such vehicles are unloaded to his/her place of business, or to convey such vehicles from one dealer's place of business to another dealer's place of business or from the point of purchase of such vehicles by the dealer to the dealer's place of business, or for the purpose of road testing; and such vehicles displaying this tag while being so conveyed shall be exempt from the mechanical inspection requirements of Sections 140 and 141 of the Uniform Act Regulating Traffic on Highways.

Each printed dealer tag shall contain a unique control number printed on the front of the tag. The number assigned to a tag may not be used more than once by a dealer in a calendar year.

A dealer shall maintain a record in any commercially reasonable manner that tracks the use and/or location of a dealer's tag. A dealer's tag may be assigned to either a vehicle or a person. It is permissible to record the control number into any other spread sheet or record as long as the dealer is able to identify the location or assignment of a dealer's tag at any time by the control number.

No homemade tags are permitted to be used under any circumstances. It is the dealer's responsibility to provide to the printer current information on file with the Motor Vehicle Division.

## INSTRUCTIONS TO PRINTER

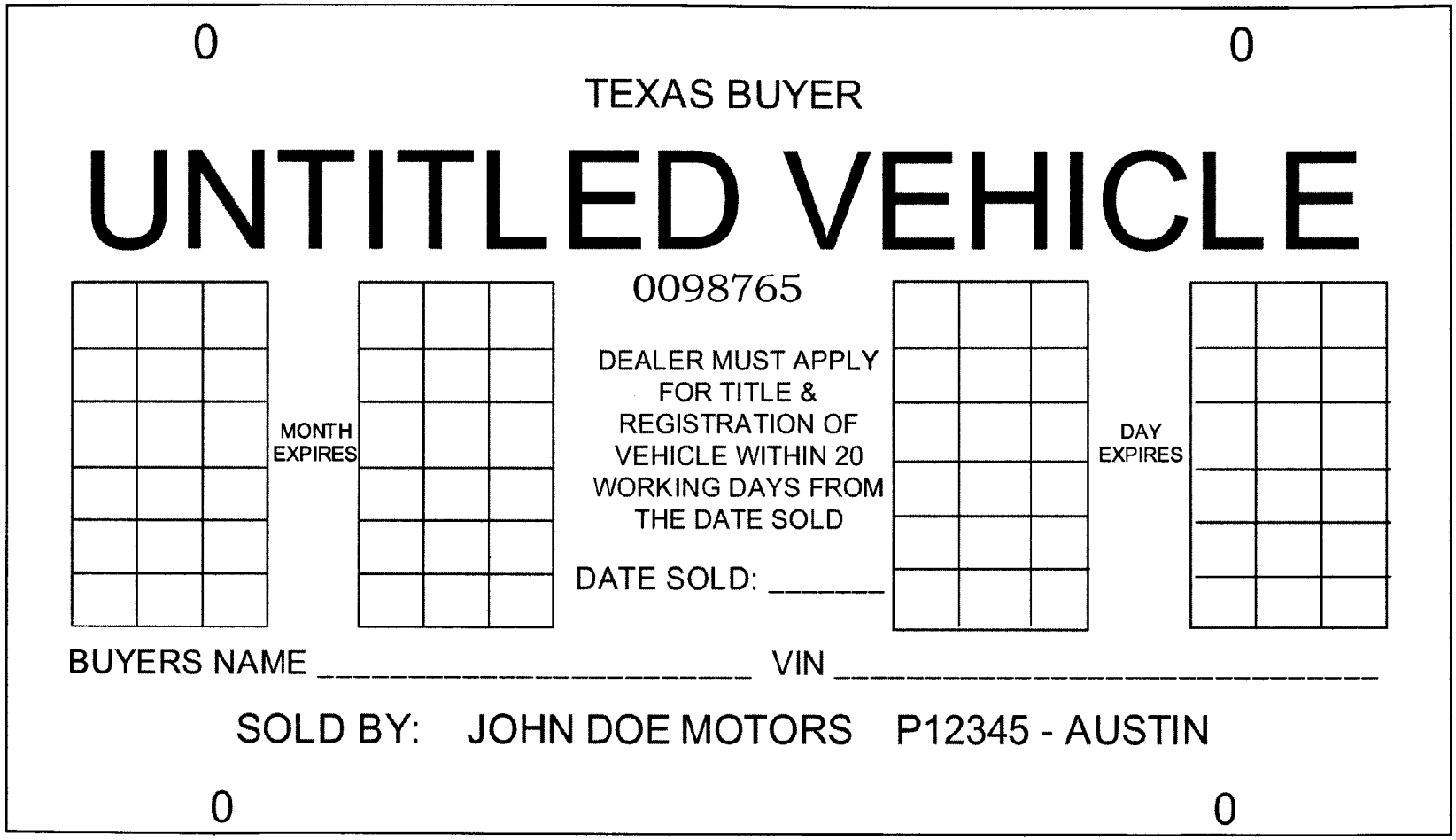
The black and white dealer's temporary cardboard tags shall be cut 6" X 11" in size. The tag shown in Figure 1 of Appendix A-1 shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7 inch centers and vertically punched on 4-1/2 inch centers. The letters in the words "UNTITLED VEHICLE" shall not be less than 3/4 inches high. These tags are to be printed with black letters and numerals on a white background. Each tag must contain a unique control number printed on the front side of the tag. Subsequent orders of tags in the same calendar year must continue the control numbering from previous orders. Printed matter on the tag must be between the top and bottom margins which shall be one inch and must appear exactly as shown in figure 1, Appendix A-1 except that the dealer's number, name and city shall be the same as that shown on the General Distinguishing Number License issued by the Motor Vehicle Division. All printed matter on a dealer's temporary cardboard tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

Motorcycle dealer temporary cardboard tags shall contain the same printed information and format but shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the letters in the words "UNTITLED VEHICLE" shall not be less than 1/2 inch high. All printed matter on a motorcycle dealer temporary cardboard tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

Texas Department of Transportation - Motor Vehicle Division - Austin, Texas

Figure 1: 43 TAC §8.138(b)(2)

Appendix B-1




COLOR: PMS#185

Figure 2: 43 TAC §8.138(b)(2)

Appendix B-2

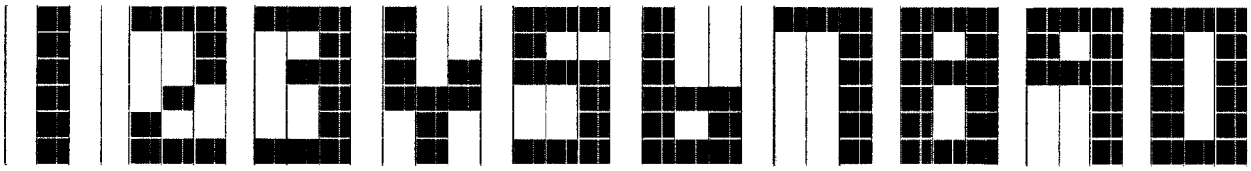
## INITIAL BUYER'S TEMPORARY CARDBOARD TAG FOR MOTOR VEHICLE

### INSTRUCTIONS TO DEALER

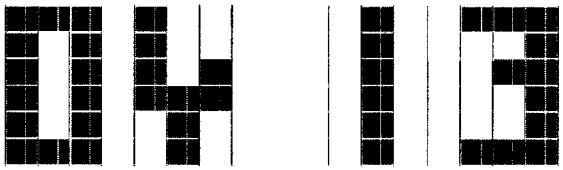
You are authorized under the Transportation Code, §503.063, to provide each customer one red cardboard buyer's tag to be used on untitled new vehicles or used vehicles that have not been registered in the buyer's name for a period not to exceed twenty one (21) calendar days from the date the vehicle is sold. It is your responsibility as a dealer to see that the following information is placed on the tag:

1. Date Vehicle Sold
2. Vehicle Identification Number (VIN)
3. Buyer's Name
4. Month and Date of Expiration

Expiration dates shall be drawn in numerals with a permanent thick black marking pen within the grids as shown in this sample. The Expiration Date shall be completely covered with one strip of 2" wide clear tape.



Example:



Month Day

If a buyer operates an untitled vehicle without the above information being shown, both the dealer and the buyer may be subject to a fine. No homemade tags are permitted to be used under any circumstances.

Each buyer's tag printed shall contain a unique control number printed on the front of the tag. The number assigned to a tag may not be used more than once by a dealer in a calendar year. It is the dealer's responsibility to provide to the printer current information on file with the Motor Vehicle Division.

A dealer shall maintain a record in numerical order of all buyer tags printed by that dealer and as to each vehicle such record shall consist of:

(1) the assigned control number from the temporary tag;
(2) the vehicle identification number;
(3) the name of the buyer to whom the temporary tag was issued.
(4) the make;
(5) the date vehicle was sold

### INSTRUCTIONS TO PRINTER

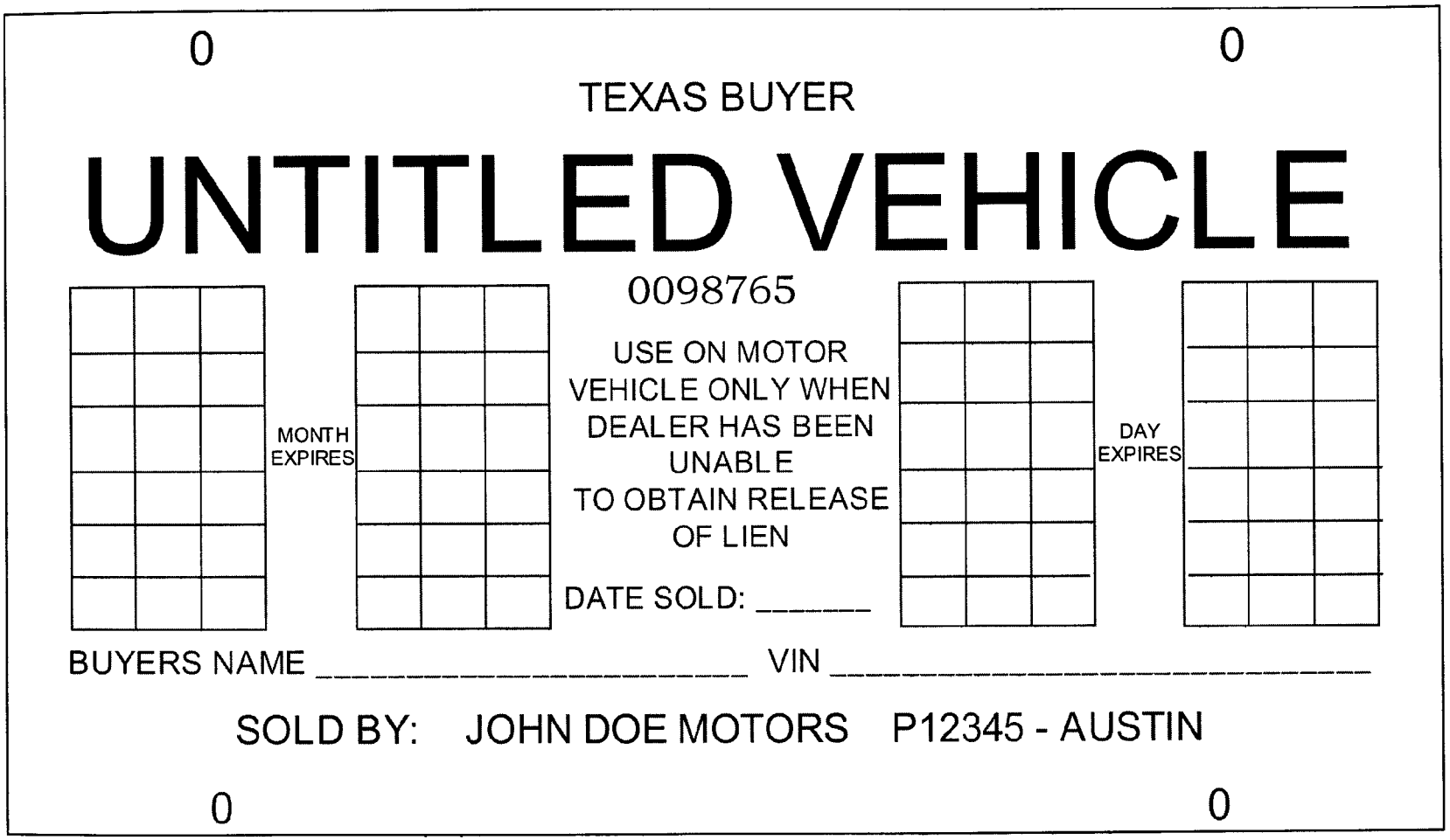
The initial buyer's temporary cardboard tag shall be cut 6'' X 11' in size. The tag shown in Figure 1, Appendix B-1 shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7 inch centers and vertically punched on 4-1/2 inch centers. The letters in the words "UNTITLED VEHICLE" shall not be less than 3/4 inches high. These tags are to be printed with red letters and numerals on a white background. Each tag must contain a unique control number printed on the front side of the tag. Subsequent orders of tags in a calendar year must continue the control numbering from previous orders. Printed matter on the tag must be between the top and bottom margins which shall be one inch and must appear exactly as shown in figure 1, Appendix B-1 except that the dealer's number, name and city shall be the same as that shown on the General Distinguishing Number License issued by the Motor Vehicle Division. All printed matter on a buyer's temporary cardboard tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

Motorcycle buyer's tags shall contain the same printed information and format but shall be cut 4" x 7" in size and shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the letters in the words "UNTITLED VEHICLE" shall not be less than 1/2 inch high. All printed matter on a motorcycle buyer's temporary cardboard tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

Texas Department of Transportation - Motor Vehicle Division - Austin, Texas

Figure 1: 43 TAC §8.138(b)(3)

Appendix B-3




COLOR: PMS#185

Figure 2: 43 TAC §8.138(b)(3) Appendix B-4

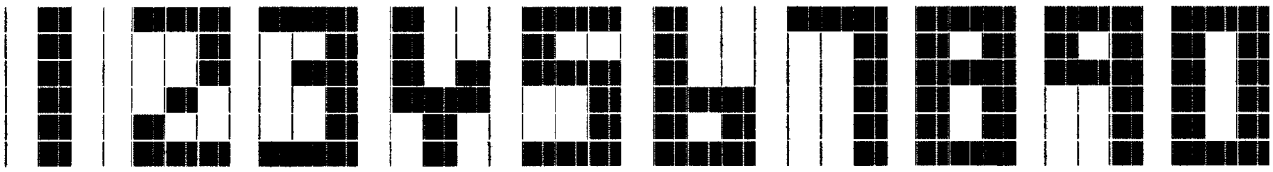
## SUPPLEMENTAL **BUYER'S TEMPORARY CARDBOARD TAG** FOR MOTOR VEHICLE

### INSTRUCTIONS TO DEALER

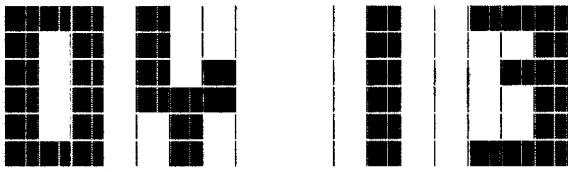
You authorized to provide a customer a blue supplemental temporary cardboard buyer's tag to be used on untitled new or used vehicles for a period not to exceed forty-two (42) days from the date of sale under specific conditions authorized by Transportation Code § 503.063 (f). The dealer may place no more than one blue supplemental temporary cardboard buyer's tag on a vehicle only when the dealer has been unable to obtain release of lien from the lienholder. As a dealer, it is your responsibility to see that the following information is placed on the tag:

1. Date Vehicle Sold
2. Vehicle Identification Number (VIN)
3. Buyer's Name
4. Month and Day of Expiration

Expiration dates shall be drawn in numerals with a permanent thick black marking pen within the grids as shown in this sample. The Expiration Date shall be completely covered with one strip of 2" wide clear tape.



Example:



Month Day

If a buyer operates an untitled vehicle without the above information being shown, both the dealer and the buyer may be subject to a fine. No homemade tags are permitted to be used under any circumstances.

Each buyer's tag printed shall contain a unique control number printed on the front of the tag. The number assigned to a tag may not be used more than once by a dealer in a calendar year. it is the dealer's responsibility to provide to the printer current information on file with the Motor Vehicle Division.

A dealer shall maintain a record in numerical order of all buyer tags printed by that dealer and as to each vehicle such record shall consist of:

(1) the assigned control number from the temporary tag;
(2) the vehicle identification number;
(3) the name of the buyer to whom the temporary tag was issued.
(4) the make;
(5) the date vehicle was sold

### INSTRUCTIONS TO PRINTER

The supplemental buyer's temporary cardboard tag shall be cut 6'' X 11' in size. The tag shown in Figure 1, Appendix B-3 shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7 inch centers and vertically punched on 4-1/2 inch centers. The letters in the words "UNTITLED VEHICLE" shall not be less than 3/4 inches high. These tags are to be printed with blue letters and numerals on a white background. Each tag must contain a unique control number printed on the front side of the tag. Subsequent orders of tags in a calendar year must continue the control numbering from previous orders. Printed matter on the tag must be between the top and bottom margins which shall be one inch and must appear exactly as shown in figure 1, Appendix B-3 except that the dealer's number, name and city shall be the same as that shown on the General Distinguishing Number License issued by the Motor Vehicle Division. All printed matter on a buyer's temporary cardboard tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

Motorcycle buyer's tags shall contain the same printed information and format but shall be cut 4" x 7" in size and shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the letters in the words "UNTITLED VEHICLE" shall not be less than 1/2 inch high. All printed matter on a motorcycle buyer's temporary cardboard tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

Texas Department of Transportation - Motor Vehicle Division - Austin, Texas

Figure 1: 43 TAC §8.138(b)(4)
Appendix C-1


COLOR: ORANGE 165

Figure 2: 43 TAC §8.138(b)(4)

Appendix C -2

# TEMPORARY CARDBOARD TAG FOR CONVERTED MOTOR VEHICLE

## INSTRUCTIONS TO CONVERTER

This converter's orange temporary cardboard tag may be used on an untitled vehicle by the converter or the converter's employees to demonstrate or cause to be demonstrated the vehicle to a prospective buyer who is an employee of a franchised motor vehicle dealer. A converter may permit a prospective buyer who is an employee of a franchised motor vehicle dealer to operate a vehicle while the vehicle is being demonstrated.

This tag may also be used to convey or cause to be conveyed an untitled vehicle from one of the converter's places of business in this state to another of the converter's places of business in this state, or from the converter's place of business to a place the vehicle is to be assembled, repaired, reconditioned, modified, or serviced, or from the state line or a location in this state where the vehicle is unloaded to the converter's place of business, from the converter's place of business to a place of business of a franchised motor vehicle dealer, or to road test the vehicle.

A vehicle being conveyed while displaying a converter's temporary cardboard tag is exempt from the inspection requirements of Chapter 548.

A converter or employee of a converter may not use a converter's temporary cardboard tag to operate a vehicle for the converter's or the employee's personal use.

Each printed converter tag shall contain a unique control number printed on the front of the tag. The number assigned to a tag may not be used more than once by a converter in a calendar year.

A converter shall maintain a record in any commercially reasonable manner that tracks the use and/or location of a converter's tag. A converter's orange tag may be assigned to either a vehicle or a person. It is permissible to record the control number into any other spread sheet or record as long as the converter is able to identify the location or assignment of an orange tag at any time by the control number.

No homemade tags are permitted to be used under any circumstances. It is the converter's responsibility to provide to the printer current information on file with the Motor Vehicle Division.

## INSTRUCTIONS TO PRINTER

The converter's orange temporary cardboard tags are to be cut 6"X11". The tag shown in Figure 1 of Appendix C-1 shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 7 inch centers and vertically punched on 4-1/2 inch centers. The letters in the words "UNTITLED VEHICLE" shall not be less than 3/4 inches high. These tags are to be printed with orange #165 letters and numerals on a white background. Each tag must contain a unique control number printed on the front side of the tag. Subsequent orders of tags in the same calendar year must continue the sequential numbering from previous orders. Printed matter on the tag must be between the top and bottom margins which shall be one inch and must appear exactly as shown in Figure 1 of Appendix C-1 except that the converter's number, name, and city shall be the same as that shown on the Converter license issued by the Motor Vehicle Division. All printed matter on a converter's temporary tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

The motorcycle converter's temporary cardboard tags shall contain the same printed information and format but shall be printed on not less than 6-ply cardboard with bolt holes to be horizontally punched on 5 3/4-inch centers and vertically punched on 2 3/4-inch centers and the letters in the words "UNTITLED VEHICLE" shall not be less than 1/2 inch high. All printed matter on a motorcycle converter's temporary cardboard tag shall be positioned so that it cannot be covered or obstructed by a plate holder.

Texas Department of Transportation - Motor Vehicle Division - Austin, Texas

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

Fuel Ethanol and Biodiesel Production Incentive Program Guidelines

The Fuel Ethanol and Biodiesel Production Incentive Program is authorized by Chapter 16, Texas Agriculture Code. These guidelines set forth the requirements and procedures for the Program, which will be administered by the Texas Department of Agriculture. These guidelines will become effective upon the effective date of the rules for this program, as promulgated by the Office of the Governor, Economic Development and Tourism Office.

**I. DEFINITIONS.**

In these guidelines:

(1) "Account" means the fuel ethanol and biodiesel production account.

(2) "ASTM" means the American Society for Testing and Materials.

(3) "Biodiesel" means a monoalkyl ester that:

(A) is derived from vegetable oils, rendered animal fats, or renewable lipids or a combination of those ingredients; and

(B) meets the requirements of ASTM D6751, the standard specification for B-100 biodiesel.

(4) "Department" means the Texas Department of Agriculture

(5) "Fuel ethanol" means ethyl alcohol that:

(A) has a purity of at least 99 percent, exclusive of added denaturants;

(B) has been denatured in conformity with a method approved by the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice;

(C) meets the requirements of ASTM D4806, the standard specification for ethanol used as a motor fuel; and

(D) is produced exclusively from agricultural products or by-products or municipal solid waste.

(6) "Office" means the Office of the Governor - Texas Economic Development and Tourism.

(7) "Producer" means a person who operates a fuel ethanol or biodiesel plant in this state.

**II. PLANT REGISTRATION.**

(a) To be eligible for a grant for fuel ethanol or biodiesel produced in a plant, a producer must apply to the Department for the registration of the plant. A producer may apply for the registration of more than one plant.

(b) An application for the registration of a plant must show to the satisfaction of the Department and the Office that:

(1) The plant is capable of producing fuel ethanol or biodiesel by providing:

(A) a copy of the producer's Internal Revenue Service (IRS) Form 637 and related documents including confirmation of a site visit by IRS staff;

(B) confirmation of registration with the Environmental Protection Agency (EPA) under 40 CFR Part 79 that the producer is registered as a Fuel Manufacturer or Additive Manufacturer;

(C) if applicable, a copy of the producer's Alcohol, Tobacco and Firearms permit;

(D) a copy of all Texas Commission on Environmental Quality permits for the plant, including applicable permits for air discharge, wastewater discharge and storage tanks; and

(E) if applicable, a copy of any Texas Fuels license required by the state Comptroller of Public Accounts;

(2) the producer has made a substantial investment of resources in this state in connection with the plant;

(3) the plant constitutes a permanent fixture in this state by providing documentation from an independent Certified Public Accountant firm or bank officer showing an approximate capital investment in the physical plant, and including a statement that the plant is a permanent fixture in the state; and

(4) any other information that the Department shall reasonably require.

(c) The Department shall review all program applications for registration of a fuel ethanol or biodiesel facility and make a determination, based on the guidelines, to approve or decline the application. The Office shall review the Department's determination to approve or decline all eligible program applications for registration of a fuel ethanol or biodiesel facility submitted to the Office by the Department and issue its concurrent determination to approve or decline the application based on the Department's review.

(d) Upon approval, the producer must enter into an agreement with the Department to be eligible for grants under the program. At a minimum, the agreement will provide the Department, and its assigns, access to the producer's registered plant, inventory and records that may be relevant to this program.

(e) An application must be on the form promulgated by the Department for this purpose. A separate application is required for each plant. Applications are available from the Department at: www.agr.state.tx.us, or by calling the Department at (877) 428-7848. Completed Applications should be mailed to: FUEL ETHANOL AND BIODIESEL PRODUCTION INCENTIVE PROGRAM, c/o Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

**III. REPORTS.**

**(a) Monthly reports.**

(1) On or before the fifth business day of each month, a producer shall report the following information to the Department on a form promulgated by the Department. A separate form is required for each registered plant. Forms are available from the Department.

(A) the number of gallons of fuel ethanol or biodiesel produced at each registered plant operated by the producer during the preceding month;

(B) the number of gallons of fuel ethanol or biodiesel imported into this state by the producer during the preceding month;

(C) the number of gallons of fuel ethanol or biodiesel sold or blended with motor fuels by the producer during the preceding month; and

(D) the total value of agricultural products consumed in each registered plant operated by the producer during the preceding month.

(2) An authorized representative of the producer must sign reports. The Department will accept original reports or reports via fax or electronic mail by the fifth business day of the month in order to determine eligibility under this section, but the Department must receive a signed original report for the producer to be eligible for a grant. Contact information for report transmission is as follows: Fuel Ethanol and Biodiesel Production Incentive Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Fax (888) 216-9867, Email:finance@agr.state.tx.us

(3) In accordance with the governing statute, a producer who fails to file a report as required by this section is ineligible to receive a grant for the period for which the report is not filed. Reporting requirements become effective upon the date the application is approved. The producer's first report following approval may include production from the full calendar month in which the application is approved.

(4) After the monthly report is filed with the Department, no changes will be allowed unless they are at the recommendation of Department staff.

**(b) Other Reporting Requirements.**

(1) By the 20th day of each month, the producer shall submit to the Department:

(A) invoices or other documentation to adequately show the amount and type of feedstock used for the production; and

(B) invoices or other documentation to adequately show the disposition of the product.

(2) Within 30 days of filing with the EPA, the producer shall provide copies to the Department of the following (as applicable):

(A) the producer's Fuel Additive Manufacturer Annual Report;

(B) the producer's Fuel Manufacturer Annual Report; and

(C) the producer's Fuel Manufacturer Quarterly Report.

(3) Within 15 days of the state fiscal year quarter end (November 30, February 28, May 31, August 31), the producer shall provide to the Department an Independent Accountant's Report, on the form attached as Attachment A, to cover the quarter.

**IV. FEE ON FUEL ETHANOL AND BIODIESEL**

Within 15 days of the state fiscal year quarter end (November 30, February 28, May 31, August 31), the producer shall remit a fee in an amount equal to 3.2 cents for each gallon of fuel ethanol or biodiesel produced at the registered plant covered by the monthly reports for that quarter, subject to the following restrictions:

(1) For each fiscal year (September 1 through August 31), the fee shall be paid on only the first 18 million gallons of fuel ethanol or biodiesel produced at any one registered plant.

(2) Fees for fuel ethanol or biodiesel produced at a registered plant shall be paid until the 10th anniversary of the date production from the plant begins.

(3) Fees are payable by check or cashiers check and should be payable to the Texas Department of Agriculture, Fuel Ethanol and Biodiesel Production Incentive Program.

**V. FUEL ETHANOL AND BIODIESEL GRANTS.**

(a) After reviewing the monthly reports and all other pertinent documentation, the Department shall approve or decline the grant. If a grant is declined, the producer shall be promptly notified by certified mail with a notification giving the reasons for denial.

(b) A Monthly Report (as described above in III.(a)) that is not filed according to these guidelines and Chapter 16 of the Agriculture Code will disqualify the producer from receiving a payment for the month covered by the report. Other reporting requirements, as described in III.(b), are required to be submitted and approved by the Department before a grant request will be approved. In the event of missing or incomplete documents under III.(b), the producer will be notified and will have 30 days from the date of the notice to rectify any deficiencies. After 30 days, the grant will be withdrawn from consideration.

(c) A producer is entitled to receive 20 cents for each gallon of fuel ethanol or biodiesel produced in each registered plant operated by the producer until the 10th anniversary of the date production from the plant begins.

(d) For each fiscal year a producer may not receive grants for more than 18 million gallons of fuel ethanol or biodiesel produced at any one registered plant.

(e) The Department shall make grants not less often than quarterly. The Department anticipates awarding grants following the end of state fiscal year quarter end (November 30, February 28, May 31, August 31).

(f) To be eligible for a grant, the producer must be in compliance with all aspects of the program.

(g) If the Office or the Department determine that the amount of money available to pay grants is not sufficient to distribute the full amount of grant funds to eligible producers as provided by these guidelines and the agreement between the Department and the producer, the Department shall proportionately reduce the amount of each grant for each gallon of fuel ethanol or biodiesel produced as necessary to continue the incentive program through the remainder of the fiscal year.

**V. FUEL ETHANOL AND BIODIESEL GRANTS.**

(a) After reviewing the monthly reports and all other pertinent documentation, the Department shall approve or decline the grant. If a grant is declined, the producer shall be promptly notified by certified mail with a notification giving the reasons for denial.

(b) A Monthly Report (as described above in III.(a)) that is not filed according to these guidelines and Chapter 16 of the Agriculture Code will disqualify the producer from receiving a payment for the month covered by the report. Other reporting requirements, as described in III.(b), are required to be submitted and approved by the Department before a grant request will be approved. In the event of missing or incomplete documents under III.(b), the producer will be notified and will have 30 days from the date of the notice to rectify any deficiencies. After 30 days, the grant will be withdrawn from consideration.

(c) A producer is entitled to receive 20 cents for each gallon of fuel ethanol or biodiesel produced in each registered plant operated by the producer until the 10th anniversary of the date production from the plant begins.

(d) For each fiscal year a producer may not receive grants for more than 18 million gallons of fuel ethanol or biodiesel produced at any one registered plant.

(e) The Department shall make grants not less often than quarterly. The Department anticipates awarding grants following the end of state fiscal year quarter end (November 30, February 28, May 31, August 31).

(f) To be eligible for a grant, the producer must be in compliance with all aspects of the program.

(g) If the Office or the Department determine that the amount of money available to pay grants is not sufficient to distribute the full amount of grant funds to eligible producers as provided by these guidelines and the agreement between the Department and the producer, the Department shall proportionately reduce the amount of each grant for each gallon of fuel ethanol or biodiesel produced as necessary to continue the incentive program through the remainder of the fiscal year.

**Attachment A.** Sample Independent Accountant's Report.

Boards of Directors

Name of Ethanol Producer

Address of Ethanol Producer

And

State of Texas

Department of Agriculture

Fuel Ethanol and Biodiesel Production Incentive Program

Austin, Texas

INDEPENDENT ACCOUNTANTS' REPORT

We certify that we audited the attached State of Texas, Department of Agriculture Fuel Ethanol and Biodiesel Production Incentive Program Monthly Reports as prepared by [*name of client*] for the three month period ended [*November 30, February 28, May 31 or August 31*]. Our examination was made in accordance with generally accepted accounting procedures as established by the American Institute of Certified Public Accountants and included such audit tests and procedures necessary to verify the volume of [*biodiesel or ethanol*] produced in the registered plant located at [*plant address*] in accordance with Texas Statutes, Chapter 16, Agriculture Code. Preparation of the Fuel Ethanol and Biodiesel Production Incentive Program Monthly Reports are the responsibility of management. Our responsibility is to express an opinion on the volume of Texas produced [*biodiesel or ethanol*] contained therein based upon our audit.

Management certified in its Monthly Reports that: [*Include those assertions that are applicable*] the total production of [*biodiesel or ethanol*], during the three month period ended [*November 30, February 28, May 31 or August 31*] is X,XXX,XXX gallons, that it was produced in the registered plant whose address is shown above, and that X,XXX,XXX gallons are eligible for the Fuel Ethanol and Biodiesel Production Incentive Program under Texas Statues, Chapter 16, Agriculture Code.

that the volume of all gallons of [*biodiesel or ethanol*] reported is on the basis of gross gallons that have not been adjusted for variations in temperature.

it is entitled to a grant under the Fuel Ethanol and Biodiesel Production Incentive Program in the amount of $X,XXX,XXX.XX pursuant to Texas Statues, Chapter 16, Agriculture Code.

In our opinion, the certifications of management outlined above, and contained in their Fuel Ethanol and Biodiesel Production Incentive Program Monthly Reports, dated [*date each Monthly Report was signed*], presents the production of [*biodiesel or ethanol*] produced at the registered plant in the state of Texas, for the three month period ended [*November 30, February 28, May 31 or August 31*] and is eligible for a grant in accordance with Texas Statues, Chapter 16, Agriculture Code, in the amount of $X,XXX,XXX.XX and that no part of the [*biodiesel or ethanol*] production represents production for which a payment was made previously.

[*Firm's Signature*]

[*Location of Firm*]

[*Date of Report*]

TRD-200600520
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: February 1, 2006

♦ ♦ ♦

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of January 20, 2005, through January 26, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on February 1, 2006. The public comment period for these projects will close at 5:00 p.m. on March 3, 2006.

FEDERAL AGENCY ACTIONS:

**Applicant: J & S Contractors**; Location: The project is located in the Old Brazos River Channel, at 1100 East Brazos Drive, in Freeport, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 272886; Northing: 3204469. Project Description: The applicant proposes to amend an existing permit to remove an existing dock and 3 pile cluster, move existing riprap upstream to an area that is eroding, replace an existing 150-foot wooden bulkhead with 150 feet of steel sheet pile bulkheading directly in front of the existing structure, place approximately 15 cubic yards of fill material into 85 square feet of shallow water habitat at the northeast corner of the property, install a dolphin piling, mechanically dredge approximately 870 cubic yards of material to a depth of 12 feet below mean low tide, and place the material in an upland leveed disposal area specified by the Brazos River Navigation District. The existing riprap has been populated by oysters, and the applicant has proposed that this riprap be moved from its current location and placed upstream to an area where the shoreline is eroding and also has an existing oyster colony. The purpose of this project is to provide dockage and a maintenance facility for commercial and recreational vessels. The existing permit was issued May 28, 1974 and authorized the construction of the existing bulkhead dock and dolphin pilings. CCC Project No.: 06-0128-F1; Type of Application: U.S.A.C.E. permit application #9107(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: Charlie Keeler**; Location: The project is located in jurisdictional wetlands adjacent to an unnamed tidal ditch, at 16515 Jolly

Roger, in Jamaica Beach, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 307887; Northing: 3230485. Project Description: The applicant requests permission to retain 286 cubic yards of fill material placed in wetlands to construct the foundation of a house and raise the grade of the lot. In addition to pouring concrete fill material to construct the foundation, portions of the house have already been constructed. The applicant also requests permission to retain a bridge over a jurisdictional ditch, constructed to create vehicular access to the lot. The applicant proposes to add an additional 78 cubic yards of fill material to construct a driveway and to fill the last 41 feet of the yard. The applicant is currently seeking options for mitigation to compensate for impacts resulting from the proposed project. CCC Project No.: 06-0133-F1; Type of Application: U.S.A.C.E. permit application #23834 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Innovene USA LLC**; Location: The project is located at the Chocolate Bayou Plant Barge Dock in Chocolate Bayou, approximately 3 miles south of the intersection of FM 2917 and FM 2004 and about 100 feet north of the Crossing of FM 2004 over Chocolate Bayou on the east bank. The project's dredge site can be located on the U.S.G.S. quadrangle map titled: Hoskins Mound, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 285212; Northing: 3233644. The project's dredge material placement area (DMPA) can be located on the U.S.G.S. quadrangle map titled: Hoskins Mound, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 286870; Northing: 3234083. Project Description: The applicant proposes to extend the time to perform maintenance dredging at an existing barge dock for a period of ten years. The dock will be dredged either mechanically or hydraulically to the previously authorized depth of 14 feet below mean low tide. Each maintenance cycle will remove up to 40,000 cubic yards of accumulated sediment to be placed in an upland leveed DMPA. The DMPA for the upcoming dredge cycle is designated as International Paper Property's Spoil Disposal Area No. 4. CCC Project No.: 06-0146-F1; Type of Application: U.S.A.C.E. permit application #9339(07) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200600486
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: January 30, 2006

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## Comptroller of Public Accounts

### Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period January 2006, as required by Tax Code, §202.058, is $55.47 per barrel for the three-month period beginning on October 1, 2005, and ending December 31, 2005. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of January 2006, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period January 2006, as required by Tax Code, §201.059, is $11.06 per mcf for the three-month period beginning on October 1, 2005, and ending December 31, 2005. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2006, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P. O. Box 13528, Austin, Texas 78711-3528.

TRD-200600466
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: January 30, 2006

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/06/06 - 02/12/06 is 18% for Consumer [1]/Agricultural/Commercial [2] credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/06/06 - 02/12/06 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 02/01/06 - 02/28/06 is 18% for Consumer/Agricultural/Commercial credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 02/01/06 - 02/28/06 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200600496
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 31, 2006

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## Texas Council for Developmental Disabilities

### Intent to Award Funds

The Texas Council for Developmental Disabilities announces its intention to award funds to the Texas Community Integration Project - Advocacy Inc. for the purpose of supporting hurricane relief activities following Hurricanes Katrina and Rita.

**Background:** Individuals with disabilities affected by Hurricanes Katrina and Rita, who are placed or at risk of placement in large facilities, need to be well informed of their options. In order to move into the community, individuals will need well designed plans and appropriate supports and services. Hurricane evacuees with disabilities are at great risk of institutionalization and loss of needed supports and services without a concerted effort to identify and assure needed services.

**Description of Project:** The Texas Community Integration project is a grant project of Advocacy, Inc., funded in part by the Texas Council for Developmental Disabilities. The project currently provides information to individuals with developmental disabilities in institutional settings about options for living in community settings. With these funds, the project will place community integration specialists in the areas of the state with the largest number of evacuees with disabilities. These specialists will provide outreach, identification and tracking, short systemic community integration advocacy and services including networking with providers and other stakeholders to individuals in congregate living situations specifically targeted around resources available for hurricane evacuees.

**Terms and Funding:** Funding for this grant will begin January 23, 2006 and continue for up to 18 months. Estimated funding will not exceed $241,900 during this time period.

For information regarding this announcement, please contact Patrice A. LeBlanc, Grants Management Director, (512) 437-5435 or e-mail address: **patrice.leblanc@TCDD.state.tx.us**.

TRD-200600511
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: January 31, 2006

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## Texas Commission on Environmental Quality

### Notice of Availability of the Draft January 2006 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2006 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft January 2006 WQMP update may be found on the commission's web site located at *http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html*. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P. O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 13, 2006. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@TCEQ.state.tx.us*.

TRD-200600547
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: February 1, 2006

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### Notice of Concentrated Animal Feeding Operation (CAFO) General Permit Amendment

The Texas Commission on Environmental Quality (TCEQ) proposes to amend General Permit No. TXG920000 which authorizes the discharge of manure, litter, and wastewater under specific circumstances from concentrated animal feeding operations (CAFOs) into and adjacent to water in the state. The amendment would allow dry litter poultry CAFOs located in the protection zone of a sole source surface drinking water supply the ability to qualify for and obtain coverage under this general permit. This general permit applies to the entire state of Texas. General Permits are authorized by Section 26.040 of the Texas Water Code and in accordance with 30 Texas Administrative Code Chapter 205.

AMENDED GENERAL PERMIT. The general permit is applicable to certain TPDES and State-only CAFOs state-wide. The general permit authorizes the discharge of manure, litter, and wastewater from CAFOs under specific circumstances. The general permit provides requirements, standards, and conditions for the proper construction, operation and maintenance of CAFOs. The permit specifies which facilities may be authorized under this general permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected.

The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed amended general permit and fact sheet will be available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin Office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at: http://www.tceq.state.tx.us/permitting/water_quality/wastewater/general/WQ_general_permits.html.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the general permit amendment or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be submitted to the Office of Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 within 30 days from the date this notice is published in the Texas Register.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a response. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this general permit. The general permit will then be set for the Commissioners' consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included on the mailing list for this specific general permit.

INFORMATION. If you need more information about the permit action or the permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained by calling Laurie Fleet of the Water Quality Division at (512) 239-5132.

Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200600535
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2006

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## Notice of District Petition

Notices mailed January 26 and January 27, 2006:

TCEQ Internal Control No. 07282005-D01; Dunham Enterprises, LLC. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 434 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders, on the property to be included in the proposed District; (3) the proposed District will contain approximately 523.997 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-290 , effective March 30, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $79,500,000.

TCEQ Internal Control No. 12132005-D02; Great Western Acquisitions LLC (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 436 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Hibernia Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 199.98 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village in Texas. By Ordinance No. 2005-123, effective February 16, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; and (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $15,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200600537
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2006

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## Notice of Meeting on March 16, 2006, in Dayton, Liberty County, Texas, Concerning the Cox Road Dump Site Facility

The purpose of the meeting is to obtain public input and information concerning proposal of the facility to the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the March 26, 2004, issue of the *Texas Register* (29 TexReg 3278).

Pursuant to §361.184(a) the Act, the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the commission hereby gives notice of a facility that the executive director has determined eligible for listing, and which the executive director proposes to list on the state registry. By this publication, the commission also gives notice pursuant to the Act, §361.1855, that it proposes a land use other than residential as appropriate for the Cox Road Dump Site facility identified below. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in 30 TAC §350.53, Land Use Classification.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published in the February 4, 2006, edition of the *Liberty Vindicator* and in the February 8, 2006, edition of the *Cleveland Advocate*.

The facility proposed for listing is the Cox Road Dump Site, located one mile north of FM 1413 on the west side of County Road 491 (Cox Road), Dayton, Liberty County, Texas. The geographic coordinates of the site are 29 degrees 58 minutes 30.84 seconds North latitude, 94 degrees 56 minutes 12.83 seconds West longitude. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the TCEQ to evaluate potential and relative risk to public health and the environment from releases or threatened releases of hazardous substances. The description may change as additional information is gathered on the sources and extent of contamination.

This facility is also known as the Liberty Waste Disposal Landfill. The landfill or landfarm is approximately 83 acres and was operated by the Joiner Oil Company from 1969 to 1983. The site is now owned by Joiner Liquidating Trust. The TCEQ and United States Environmental Protection Agency (EPA) were unable to contact property owners by mail or phone after numerous attempts.

The facility was originally used to landfill tank bottoms and filter cake from petroleum companies. Area residents reported that the landfill was up to 40 feet deep, and unlined. At the close of operations, the landfill was capped with approximately three feet of topsoil, which has since eroded away exposing the buried waste. Runoff from the site drains into the Trinity River through a series of ditches that run at the edges and through the center of the site. In April of 2004, TCEQ collected on- site soil samples containing levels of contamination above three times the background for barium, cadmium, chromium, cobalt, lead, mercury, Aroclor 1016, semi-volatile organic compounds (SVOCs) (including phenol), and volatile organic compounds (VOCs) including BTEX. On-site shallow ground water samples had various VOCs and SVOCs (phenol and polynuclear aromatic hydrocarbons, pesticide). Run-off controls are inadequate and the site is partially fenced at access points (ditch and two gates). No contaminants have been found in off-site residential water wells.

A public meeting will be held on March 16, 2006, at 7:00 p.m., in the cafeteria of Dayton High School, 3200 North Cleveland in Dayton, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, to identify additional potentially responsible parties, and to receive comment regarding the proposed commercial/industrial land use designation. The public meeting will not be a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., March 16, 2006, and should be sent in writing to Geof Meyer, Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 127, P. O. Box 13087, Austin, Texas 78711-3087, or by facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on March 16, 2006.

A portion of the record for this site, including documents pertinent to the ED's determination of eligibility, is available for review at the Jones Public Library, 307 West Houston Street, Dayton, Texas 77535, (936) 258-7060, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633- 9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363, extension 2141. Information is also available regarding the state Superfund program at: *http://www.tceq.state.tx.us/remediation/superfund/index.html*.

TRD-200600542
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: February 1, 2006

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## Notice of Public Hearing

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapter 111, Control of Air Pollution from Visible Emissions and Particulate Matter, and the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations §51.102, of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would prohibit the burning of all household refuse on certain properties in a limited demographic region, authorize by rule the burning of plant growth in attainment areas on the property on which it was generated, and provide for the burning of plant growth from specific residential properties on designated sites in counties with a population of less than 50,000.

A public hearing on this proposal will be held in Austin, Texas on March 7, 2006, at 10:00 a.m., at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle, Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-041-111-CE. Comments must be received by 5:00 p.m., March 13, 2006. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ronnie Kramer, Field Operations Division, at (512) 239-0194.

TRD-200600465
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 30, 2006

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## Notice of Water Quality Applications

The following notices were issued during the period of January 24, 2006 through January 27, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P. O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

AQUA UTILITIES, INC. has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. 12563-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 1.3 miles west of the intersection of Farm-to-Market Road 729 and Farm-to-Market Road 1969 and approximately 4 miles southwest of the intersection of State Highway 49 and Farm-to-Market Road 1969 in Marion County, Texas.

CITY OF DENTON has applied for a renewal of TPDES Permit No. 10027-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 21,000,000 gallons per day. The applicant has also applied to the Texas Commission on Environmental Quality (TCEQ) for approval of a substantial modification to its pretreatment program under the TPDES program. The current permit authorizes the land application of sewage sludge for beneficial use on 357 acres, land application of class A sewage sludge for beneficial use, and marketing and distribution of sludge. The facility is located east of the City of Denton along Pecan Creek, approximately 5,700 feet east of State Highway 288 and two miles upstream from Lewisville Lake in Denton County, Texas. The applicant has also applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. Approval of the request for modification to the pretreatment program will allow the applicant to incorporate the City of Denton's Project XL Final Project Agreement. The request for approval complies with both federal and State requirements. The substantial modification will be approved without change if no substantive comments are received within 30 days of notice publication.

CITY OF EL PASO AND TEXAS DEPARTMENT OF TRANSPORTATION, which operate the City of El Paso Municipal Separate Storm Sewer System (MS4), have applied for a renewal of NPDES Permit No. TXS000801 which authorizes storm water point source discharges to surface water in the state from the City of El Paso Municipal Separate Storm Sewer System (MS4). This permit will be renewed as TPDES Permit No. WQ0004527000. The MS4 is located within the corporate boundary of the City of El Paso, in El Paso County, Texas.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 10 has applied for a new permit, proposed TPDES Permit No. WQ0014643001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 94,500 gallons per day. The facility is located on the east side of Barker Cypress Road, 4,600 feet north of Huffmeister Road in Harris County, Texas.

ORANGEFIELD INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 11607-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located immediately north of Farm-to-Market Road 105 and 0.5 mile west of the intersection of Farm-to-Market Road 105 and Farm-to-Market Road 408 in Orange County, Texas.

KENNETH DUANE REYNOLDS has applied for a renewal of Permit No. 11737-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day via subsurface drip irrigation of 2.75 acres of pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located on State Highway 64, approximately 2.5 miles east of the intersection of Loop 323 and State Highway 64 in Smith County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a new permit, Proposed Permit No. WQ0014619001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 8,288 gallons per day via subsurface application at the west-bound site and the disposal of treated wastewater at a daily average flow not to exceed 6,272 gallons per day via subsurface application at the east-bound site. The first proposed facility and disposal site will be located along the north side (west-bound) of Interstate Highway 10, approximately 5,280 feet west of the intersection of Interstate Highway 10 and Farm-to-Market Road 1104 in Guadalupe County, Texas. The second proposed domestic wastewater treatment facility and disposal site will be located along the south side (east-bound) of Interstate Highway 10, approximately 5,280 feet west of the intersection of Interstate Highway 10 and Farm-to-Market Road 1104 in Guadalupe County, Texas. The facilities and disposal sites will be located in the drainage basin of Nash Creek in Segment No. 1804 of the Guadalupe River Basin.

Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THIS NOTICE.

The TCEQ has initiated a minor amendment of the TPDES permit issued to AQUA DEVELOPMENT, INC. to remove Other Requirements, provision number six on page 23 of the existing permit, which is in regards to daily operator inspection of the facility. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 1.10 miles north of the intersection of State Highway 288 and Farm-to-Market Road 1462 in Brazoria County, Texas.

CITY OF THREE RIVERS has applied for a minor amendment to the TPDES permit to authorize a temporary reduction in the discharge by including an interim phase of 252,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. TCEQ received this application on November 8, 2005. The facility is located approximately 900 feet southwest of the intersection of State Highway 72 and Avenida Seguin in the City of Three Rivers in Live Oak County, Texas.

TRD-200600538
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2006

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## Notice of Water Rights Application

Notices issued January 26, 2006 through January 31, 2006:

Application No. 08-2455B; The City of Dallas, 1500 Marilla Street, Room 4A/N, Dallas, Texas 75201, applicant, seeks to amend Certificate of Adjudication No. 08-2455 pursuant to Texas Water Code 11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 08-2455 authorizes the owner to impound 591,704 acre-feet of water in a reservoir known as Lake Ray Roberts on the Elm Fork Trinity River, tributary of the Trinity River Basin. Owner is also authorized to divert and use not to exceed 591,704 from the reservoir for municipal and domestic purposes and 115,100 acre-feet of water per year out of the currently authorized 591,704 acre-feet portion for non-consumptive hydroelectric purposes from Lake Ray Roberts at a maximum diversion rate of 159 cfs. The time priority for the municipal and domestic water is November 24, 1975. The non-consumptive hydroelectric water is non-priority water. Applicant seeks to amend Certificate of Adjudication No. 08-2455 to change the use of the 591,704 acre-feet of water per year, currently used for municipal and domestic purposes to multiple (municipal, domestic, agricultural, industrial and recreation) purposes. Applicant does not seek to change the 115,100 acre-feet per year currently authorized for non-consumptive hydroelectric purposes on a non-priority basis. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on September 2, 2005. Additional information was received on November 1, 2005. The application was accepted for filing and declared administratively complete on November 7, 2005. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by February 27, 2006.

Application No. 08-2456F; The City of Dallas, 1500 Marilla Street, Room 4A/N, Dallas, Texas 75201, applicant, seeks to amend Certificate of Adjudication No. 08-2456 pursuant to Texas Water Code 11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 08-2456 authorizes the owner to impound 549,976 acre-feet of water in Lake Lewisville on the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, and divert and use from Lake Lewisville not to exceed 403,700 acre-feet of water per year (out of that being 398,700 acre-feet for municipal, 4,900 acre-feet for agricultural (irrigation), and 100 acre-feet for recreational purposes), 134,976 acre-feet of water per year for municipal and domestic purposes, 800 acre-feet of water per year for industrial purposes, 451,030 acre-feet of water per year for non-consumptive hydroelectric purposes (on a non-priority basis) and 1,000 acre-feet of water per year for domestic purposes. Owner is further authorized to divert and use 9,500 acre-feet of water per year from two points on the Elm Fork Trinity River for industrial and municipal purposes. Owner is also authorized to use the bed and banks of the Elm Fork Trinity River to deliver water to the diversion points. There are multiple priority dates. The Certificate has a special condition where the use allocation listed above for the 403,700 acre-feet of water will expire on January 20, 2006 and reverts to municipal use. Applicant seeks to amend Certificate of Adjudication No. 08-2456 to change the purpose of use of the 549,976 acre-feet of water to multiple (municipal, domestic, agricultural, industrial, recreation) purposes. No other changes are requested in the amendment application. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on September 2, 2005. Additional information was received on November 1, 2005. The application was declared administratively complete and accepted for filing on November 7, 2005. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by February 27, 2006.

APPLICATION NO. 14-1441A; Boot Ranch Development, L.P., applicant, 36 Fares Ranch Road, Fredericksburg, TX 78624, seeks an amendment to Certificate of Adjudication No. 14-1441 pursuant to Texas Water Code 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 14-1441 authorizes the owner to maintain a dam and reservoir on Upper Palo Alto Creek, tributary of the Pedernales River, tributary of the Colorado River, Colorado River Basin and impound therein not to exceed 6 acre-feet of water. The owner is also authorized to divert 34 acre-feet of water from the reservoir at a maximum diversion rate of 1.89 cfs (800 gpm) for agricultural purposes to irrigate a maximum of 29 acres in Gillespie County with a time priority of 1943. Pursuant to an Upstream Firm Water Contract between the applicant and the Lower Colorado River Authority, the applicant has

applied for an amendment to Certificate of Adjudication No. 14-1441 to: (1) increase the storage capacity of the reservoir on Upper Palo Alto Creek from 6 acre-feet to 93 acre-feet; (2) increase the annual diversion amount from 34 acre-feet to 232 acre-feet of water per year; (3) increase the diversion rate from 1.89 cfs (800 gpm) to 5.79 cfs (2,550 gpm); (4) add an existing off-channel reservoir as part of the irrigation system; (5) add recreational use to both reservoirs; and (6) increase the lands to be irrigated from 29 acres to a maximum of 100 acres of land out of a 1,921.5-acre tract in Gillespie County, being the same tract as authorized in Certificate of Adjudication No. 14-1440. The applicant indicates water diverted from the reservoir on Upper Palo Alto Creek will be discharged directly into the off-channel reservoir for subsequent irrigation. The off-channel reservoir is located four miles north from Fredericksburg in the Charles C. Cammert Original Survey 295, Abstract 128, Gillespie County, bearing S23.5 W, 2,402 feet from the northeast corner of the Cammert Survey, also being at Latitude 30.3468 N, Longitude 98.8763 W. It has a capacity of 56 acre-feet and a surface area of 5 acres. The applicant further indicates that authorized diversions will be reported as metered at the existing diversion point on Palo Alto Creek and any evaporation losses from the off-channel reservoir will be included in the reported diversions. Therefore, the off-channel reservoir was not considered in determining water availability for this application. The applicant also indicates that any evaporative losses resulting from the increase in the on-channel storage capacity will be estimated and the total amount of water diverted from Palo Alto Creek will be limited to the authorized annual diversion amount less the estimated evaporative losses from the enlarged portion of the reservoir. The applicant submitted an accounting plan "Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir" which accounts for all diversions from the reservoir under all of the applicant's authorizations. Staff reviewed the accounting plan and found it acceptable. Ownership of the 1,921.5-acre tract is evidenced by a Special Warranty Deed as recorded in Volume 562, Page 75 (Document #044217) in the Official County Clerk Records of Gillespie County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on May 25, 2005. Additional information and fees were received on August 5 and October 25, 2005. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 8, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-1881A; Dean Bagley, Jr., P.O. Box 1319, San Saba, Texas, 76877, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment to a Certificate of Adjudication pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 14-1881 authorizes the applicant to divert and use not to exceed 161 acre-feet of water per year, with a time priority of 1910, from a diversion point on the San Saba River, tributary of the Colorado River, Colorado River Basin, for agricultural purposes to irrigate 107 acres of land in San Saba County at a maximum diversion rate of 3.34 cfs (1,500 gpm). Applicant seeks to amend Certificate of Adjudication No. 14-1881 to add a diversion point on the San Saba River, approximately 9.7 river miles downstream of the current diversion point for the diversion of 21 acre-feet of water per year out of the currently authorized 161 acre-feet of water for agricultural (irrigation) purposes at a maximum combined diversion rate of 3.34 cfs (1,500 gpm). The point is located at Latitude 31.208N, Longitude 98.712W, bearing S77.767E, 7,208.6 feet from the west corner of the R.D. McAnnelly Survey No. 37, Abstract No. 945, one mile north of the City of San Saba, the county seat of San Saba County, Texas. Applicant is not requesting to change the currently authorized diversion rate. Applicant also seeks to add a place of use, being 81.7 acres of land out of a larger 188.3 acre-tract in San Saba County. Ownership of the 188.3 acres is evidenced by a Deed filed with the Official Public Records of San Saba County, Texas as Volume 153, Pages 157-161, a Warranty Deed filed with the Official Public Records of San Saba County, Texas as Volume 153, Pages 129-132, and a Warranty Deed filed with the Official Public Records of San Saba County, Texas as Volume 163, Pages 287-291. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on July 12, 2005. Additional information and fees were received on September 14, 2005 and January 19, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 3, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by February 16, 2006.

APPLICATION NO. 5821; Upper Trinity Regional Water District (UTRWD or Applicant) P.O. Drawer 305, Lewisville, Texas 75067, seeks a Water User Permit pursuant to Texas Water Code (TWC) 11.121 and 11.085 and Texas Commission on Environmental Quality (TCEQ) Rules 30 TAC 295.1, et seq., to construct and maintain a reservoir (known as Lake Ralph Hall) on the North Sulphur River, Sulphur River Basin, Fannin County, Texas for in-place recreational purposes and divert and use not to exceed 45,000 acre-feet of water per year from Lake Ralph Hall for municipal, industrial, and agricultural purposes. Applicant requests to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Sulphur River Basin and Trinity River Basin. Because Applicant has requested an interbasin transfer of water, public meetings will be held in the basin of origin, the Sulphur River Basin, and the receiving basin, the Trinity River Basin. For further information on the application, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512- 239-3300 to obtain a copy of the complete notice. The application was received on September 2, 2003. Additional fees and information were received on May 3, 2004, July 7, 2004, July 19, 2004, and August 6, 2004. The Executive Director reviewed the application and determined it to be administratively complete on August 13, 2004. The Executive Director has not completed its technical review of the application. The Texas Commission on Environmental Quality (TCEQ) will hold public meetings to receive comments on this application. The public meetings will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the Commissioners before reaching a decision on the application and no formal response will be made. During the Formal Comment Period, members of the public may state their comments into the official record. The Executive Director will summarize the formal comments and prepare a written response. The written response will be considered by the Commissioners in their decision- making process and upon request will be available to the public. Public Meetings are to be held: Monday, March 27, 2006 at 7:00 PM, Fannindel High School-Cafetorium, 610 Main Street, Ladonia, Texas 75449; and Tuesday, March 28, 2006 at 7:00 PM, City of Lewisville - Municipal Annex, 1197 West Main Street, Lewisville, Texas 75067. Citizens are encouraged to submit written comments anytime during the meetings or by mail before the meetings to the Office of the Chief Clerk, TCEQ, MC 105, P.O. Box 13087, Austin, Texas, 78711-3087. If you need more information, please call the TCEQ Office of Public Assistance, Toll Free at 1-800-687-4040. The TCEQ may grant a contested case

hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200600536
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2006

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## Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ) on January 24, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Dan Hughitt dba Hugitts Sawmill; SOAH Docket No. 582-06-0522; TCEQ Docket No. 2004-1320-MLM-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Dan Hughitt dba Hugitts Sawmill on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200600539
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2006

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## Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (commission) on January 26, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Nelson Collazo; SOAH Docket No. 582-05-4952; TCEQ Docket No. 2004-0490-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Nelson Collazo on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200600540
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2006

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## Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 10, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 10, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: 5510 Acorn L.L.C. dba Acorn Mobile Home Park; DOCKET NUMBER: 2004-2127-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 12772-001, Regulated Entity Reference Number (RN) 101511566;

LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(8), TPDES Permit Number 12772-001, and the Code, §26.121(a)(1), by failing to receive permission prior to moving the final effluent discharge point; and 30 TAC §5.702, by failing to pay the public health service fees; PENALTY: $3,450; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: A&F Brothers, Inc. dba Super Stop 19; DOCKET NUMBER: 2005-1379-PST-E; IDENTIFIER: RN102382579; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the underground storage tank (UST) records at the station; 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III), and (d)(1)(B)(ii) and (iii)(IV), and the Code, §26.3475(c)(1), by failing to monitor USTs for releases, by failing to monitor the piping of the UST system in a manner designed to detect releases, by failing to have the line leak detectors tested, by failing to reconcile inventory control records on a monthly basis, and by failing to measure any water level in the bottom of the tanks to the nearest 1/8-inch; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain and produce all current Stage II records for on-site review; 30 TAC §115.242(3) and (3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS); and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $11,616; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Alonzo Aguilar dba Aguilar's Grocery; DOCKET NUMBER: 2005-1749-PST-E; IDENTIFIER: RN102274669; LOCATION: Alpine, Brewster County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to amend, update, or change information on the UST registration and self-certification forms; 30 TAC §334.10(b), by failing to make available legible copies of all required records for inspection; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a removable point in the immediate area of the fill tube; 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a proper release detection method; 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection for the UST system; and 30 TAC §334.51(b)(2)(C) and the Code, §26.34475(c)(2), by failing to provide proper overfill prevention equipment for the UST system; PENALTY: $7,560; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Albertson's Inc. dba Albertson's Express 933; DOCKET NUMBER: 2005-1859-PST-E; IDENTIFIER: RN100820182; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections for the Stage II VRS; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the required annual testing to verify proper testing of the Stage II equipment; PENALTY: $2,912; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(5) COMPANY: City of Atlanta; DOCKET NUMBER: 2005-1802-MWD-E; IDENTIFIER: RN102883212; LOCATION: Atlanta, Cass County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 10338001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia nitrogen and total zinc and by failing to submit the annual sludge report; PENALTY: $14,800; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Beall Concrete Enterprises, Limited; DOCKET NUMBER: 2005-1701-IWD-E; IDENTIFIER: RN102707643 and RN100706852; LOCATION: Roanoke, Denton County, Texas; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1), Water Quality Permit Number TXG110413, and the Code, §26.121(a), by failing to comply with permit effluent limits and by failing to submit all required monitoring data; PENALTY: $3,264; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Bigford, Inc. dba Fiesta Marina; DOCKET NUMBER: 2005-1778-PWS-E; IDENTIFIER: RN101254266; LOCATION: near Mathis, Live Oak County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (F), (3)(A)(ii), and (f)(3), and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis, by failing to post a public notification, by failing to collect and submit repeat water samples, by failing to collect and submit the appropriate number of water samples, and by exceeding the maximum contaminant level (MCL) for coliform bacteria; PENALTY: $3,800; ENFORCEMENT COORDINATOR: Amanda King-Zrubek, (512) 239-0824; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Brazoria County Fresh Water Supply District Number 1; DOCKET NUMBER: 2005-0952-MWD-E; IDENTIFIER: RN102335460; LOCATION: near Damon, Brazoria County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 11130001, and the Code, §26.121(a), by failing to comply with permit effluent limits for five-day biochemical oxygen demand, total suspended solids (TSS), flow, and chlorine residual and by failing to submit the annual sewage sludge report; PENALTY: $7,020; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Buda/Kyle Church of Christ; DOCKET NUMBER: 2005-1841-PWS-E; IDENTIFIER: RN101197820; LOCATION: Buda, Hays County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (F), (3)(A)(ii), and (f)(3) and THSC, §341.031(a) and §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis, by failing to collect and submit five routine bacteriological samples, by failing to collect and submit repeat bacteriological water samples, and by exceeding the MCL for total coliform bacteria; and 30 TAC §290.122(b)(2)(B) and (c)(2)(B), by failing to provide public notice of the MCL exceedance and by failing to provide public notification of the failure to conduct the repeat sampling; PENALTY: $3,150; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10) COMPANY: Ceres Environmental Services, Inc.; DOCKET NUMBER: 2005-1997-MSW-E; IDENTIFIER: RN104386180; LO-

CATION: Houston, Harris County, Texas; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §37.921 and §328.5(d), by failing to demonstrate acceptable financial assurance for closure of a recycling facility; PENALTY: $1,240; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Cheyenne Hills/Glen Rose 618 Limited Partnership; DOCKET NUMBER: 2005-1488-MLM-E; IDENTIFIER: RN101233526; LOCATION: near Arlington, Somervell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A), (e)(4)(A), (f)(3)(E)(i), (i), (j), (m)(1)(A) and (B), (n)(2) and (3), and (q)(1), and THSC, §341.033(a) and §341.0315(c), by failing to maintain a free chlorine residual, by failing to have the water system operated at all times under the direct supervision of a water works operator who holds at least a valid Class D license, by failing to maintain the monthly operating report and make it available to commission personnel, by failing to conduct an annual inspection of the water system's ground storage tank, by failing to conduct an annual inspection of the water system's pressure tank, by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement, by failing to provide copies of customer service inspection certifications performed on all new connections, by failing to prepare and maintain an accurate and up-to-date map of the distribution system, by failing to maintain a copy of the well completion data, and by failing to issue a boil water notice; 30 TAC §290.42(j) and (l), by failing to initiate maintenance and housekeeping practices, by failing to provide confirmation that the chlorine used to disinfect the water supply conforms to the American National Standards Institute/National Sanitation Foundation Standard 60, and by failing to compile and maintain an up-to-date plant operations manual; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement or exception to the easement requirement; 30 TAC §290.109(c)(2)(A)(iii) and THSC, §341.033(d), by failing to perform routine monthly bacteriological sampling of the public drinking water supply; 30 TAC §290.122(c)(2)(A), by failing to provide public notification of the failure to conduct monthly bacteriological sampling; and 30 TAC §288.20, by failing to provide and maintain a drought contingency plan; PENALTY: $2,772; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: City of Crandall; DOCKET NUMBER: 2005-0837-MWD-E; IDENTIFIER: RN101917136; LOCATION: Crandall, Kaufman County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 0010834001, and the Code, §26.121(a), by failing to comply with carbonaceous biochemical oxygen demand (CBOD) and fecal coliform and by failing to submit parameter data for the daily average flow and maximum flow; PENALTY: $2,386; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Duke Energy Field Services, L.P.; DOCKET NUMBER: 2005-0489-AIR-E; IDENTIFIER: RN100216407; LOCATION: near Glazier, Hemphill County, Texas; TYPE OF FACILITY: natural gas processing; RULE VIOLATED: 30 TAC §122.145(2)(A) and (B), §122.146(2), and THSC, §382.085(b), by failing to complete accurate deviation reports and by failing to submit a Title V compliance certification and the associated deviation report; and 30 TAC §101.201(b)(4) and THSC, §382.085(b), by failing to maintain complete records for non-reportable emissions events; PENALTY: $6,160; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(14) COMPANY: ExxonMobil Corporation dba ExxonMobil Chemical Company; DOCKET NUMBER: 2005-1811-MLM-E; IDENTIFIER: RN102501020; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: polyethylene; RULE VIOLATED: 30 TAC §115.355(1) and §122.143(4), Air Operating Permit Number 02276, and THSC, §382.085(b), by failing to properly calibrate the monitoring equipment; 30 TAC §115.242(1)(A) and THSC, §382.085(b), by failing to provide a Stage II VRS; 30 TAC §116.115(c) and §122.143(4), Permit Number 4831, Operating Permit Number 02276, and THSC, §382.085(b), by failing to control the maximum hourly emission rate of 274 parts per million of granular product, by failing to maintain the heating value, by failing to maintain the permitted limits for volatile organic compounds and particulate matter, and by failing to properly conduct water sampling and testing by an approved method meeting the requirements of the sampling procedures manual; 30 TAC §115.216(3)(A)(i) and (iii), by failing to record the leak test and identification number of each gasoline tank-truck tank; and 30 TAC §122.143(4), Operating Permit Number 02276, and 40 Code of Federal Regulations §60.4(a) and §60.487(a), by failing to submit reports required to assure compliance with the permit; PENALTY: $26,080; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Flomot Water Supply Corporation; DOCKET NUMBER: 2005-1853-PWS-E; IDENTIFIER: RN102317849; LOCATION: Flomot, Motley County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to collect water samples; PENALTY: $225; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(16) COMPANY: Held Enterprises, Inc. dba Preston West Golf Course; DOCKET NUMBER: 2005-1797-PWS-E; IDENTIFIER: RN101379147; LOCATION: Amarillo, Randall County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis and for failing to post public notification; PENALTY: $788; ENFORCEMENT COORDINATOR: Amanda King-Zrubek, (512) 239-0824; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Horse Heaven Stables, Inc. dba Ms. Agnes Cafe; DOCKET NUMBER: 2005-1754-PWS-E; IDENTIFIER: RN101244127; LOCATION: Richmond, Fort Bend County, Texas; TYPE OF FACILITY: outdoor restaurant with a public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis and failing to provide public notification; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Amanda King-Zrubek, (512) 239-0824; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: IGA Foodliner of Jacksboro, Texas, Inc.; DOCKET NUMBER: 2005-1712-PST-E; IDENTIFIER: RN101857605; LOCATION: Jacksboro, Jack County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED:

30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $640; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(19) COMPANY: Frank A. Daugherty Trust dba Indian Springs Water Company; DOCKET NUMBER: 2005-1122-PWS-E; IDENTIFIER: RN101652386; LOCATION: Mount Vernon, Franklin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine bacteriological samples and failing to issue public notice; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(20) COMPANY: Jim Wells County; DOCKET NUMBER: 2005-1398-MLM-E; IDENTIFIER: RN104633565; LOCATION: near Ben Bolt, Jim Wells County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.4, by failing to obtain authorization prior to any activity of storage, processing, or disposal of MSW; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general outdoor burning prohibition; PENALTY: $1,440; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(21) COMPANY: K-T Galvanizing Company, Inc.; DOCKET NUMBER: 2005-1863-AIR-E; IDENTIFIER: RN100578368; LOCATION: Venus, Johnson County, Texas; TYPE OF FACILITY: zinc fabricated steel products; RULE VIOLATED: 30 TAC §116.115(b) and (c), New Source Review Permit Number 39567, and THSC, §382.085(b), by failing to have emission capture and abatement equipment working during operation and by failing to measure the acid concentrations in four hydrochloric acid tanks; PENALTY: $7,200; ENFORCEMENT COORDINATOR: David Flores, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: City of Lytle; DOCKET NUMBER: 2005-1800-MWD-E; IDENTIFIER: RN102327020; LOCATION: Lytle, Atascosa County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10096001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS; PENALTY: $7,584; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: Noor Suteria dba M & S Kountry Grocery; DOCKET NUMBER: 2005-1343-PST-E; IDENTIFIER: RN102839644; LOCATION: Point Blank, San Jacinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases and by failing to successfully test the line leak detectors; and 30 TAC §334.45(c)(3)(A), by failing to have an operational sheer valve for pressurized piping; PENALTY: $11,200; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Manville Water Supply Corporation; DOCKET NUMBER: 2005-1435-MLM-E; IDENTIFIER: RN101271088; LOCATION: Coupland, Williamson County, Texas; TYPE OF FACILITY: retail public utility with a pump station; RULE VIOLATED: 30 TAC §290.42(i) and §305.42 and the Code, §26.121(a), by failing to obtain a discharge permit prior to the discharge of backwash wastewater from the facility; PENALTY: $6,240; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(25) COMPANY: City of Munday; DOCKET NUMBER: 2004-0156-MWD-E; IDENTIFIER: TPDES Permit Number 10228-002, RN103016192; LOCATION: Munday, Knox County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), §319.11, and TPDES Permit Number 10228-002, by failing to accurately determine loading calculations reported on the discharge monitoring reports, by failing to maintain the growth of cattails in the wastewater treatment ponds, by failing to comply with its permitted effluent limits for dissolved oxygen (DO), pH, TSS, and biochemical oxygen demand, by failing to submit noncompliance notifications for effluent violations, and by failing to furnish certification to the regional office by a Texas licensed professional engineer that the completed pond lining meets the appropriate criteria; 30 TAC §319.11(b) and TPDES Permit Number 10228-002, by failing to meet the 15-minute hold time established for measuring pH; and 30 TAC §319.7(a)(1) and TPDES Permit Number 10228-001, by failing to document the analysis time for DO measurements; PENALTY: $16,129; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(26) COMPANY: City of Nocona; DOCKET NUMBER: 2005-1857-MWD-E; IDENTIFIER: RN102181591; LOCATION: Nocona, Montague County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10355002, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for TSS and flow; PENALTY: $5,664; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(27) COMPANY: North Orange Water & Sewer, L.L.C.; DOCKET NUMBER: 2005-1266-MWD-E; IDENTIFIER: RN102075058; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1), (5), and (7), 305.126(a) and (b), 312.48(1), 319.6, 319.7(a)(5), and 319.11(b), TPDES Permit Number 13072001, and the Code, §26.121(a), by failing to obtain authorization to commence construction of the necessary expansion of the treatment and/or collection facilities, by failing to operate and maintain the facility to ensure compliance with TSS, by failing to maintain compliance with the permit effluent limits for TSS and flow, by failing to notify the agency of effluent violations, by failing to submit annual sludge reports, by failing to notify the agency of any additions, modifications, and/or expansions to the facility, by failing to maintain complete pH meter and DO meter calibration records, by failing to comply with the test procedures for the analysis of total chlorine residuals, and by failing to conduct the required chlorine residual quality assurance/quality control tests; and 30 TAC §317.4(a)(7), by failing to provide an access stairway and walkway with handrails to all areas where tanks are more than ten feet above the ground; PENALTY: $7,456; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Peggy Tiemann dba Phillipsburg Mobile Home Park; DOCKET NUMBER: 2005-1693-PWS-E; IDENTIFIER: RN101450419; LOCATION: Brenham, Washington County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(e)(3)(A), by failing to operate the disinfection equipment to provide continuous and effective disinfection under all conditions; 30 TAC §290.110(b)(4), by failing to maintain a minimum free

chlorine residual of 0.2 milligrams per liter; 30 TAC §290.41(c)(3)(K) and (N), by failing to seal the wellhead with a gasket or sealing compound and by failing to provide a flow measuring device for each well; 30 TAC §290.46(e)(4)(A), (f), and (m)(4), by failing to operate the system under the direct supervision of a competent water works operator holding a Class D or higher operators license, by failing to provide the public water system's operating records for review during inspections, by failing to initiate a maintenance program to maintain the general appearance of the system's facilities and equipment, and by failing to maintain all water treatment units, storage, and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.43(d)(2), by failing to provide the pressure tank with a pressure release device; 30 TAC §290.45(b)(1)(E)(ii), by failing to provide a pressure tank capacity of 50 gallons per connection; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay the public health service fees; PENALTY: $2,120; ENFORCEMENT COORDINATOR: Amanda King-Zrubek, (512) 239-0824; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: Plains Pipeline, L.P.; DOCKET NUMBER: 2005-1822-AIR-E; IDENTIFIER: RN100214956; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: crude oil storage and transfer site; RULE VIOLATED: 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to timely submit a semi-annual deviation report; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(30) COMPANY: Precision Painting, Inc.; DOCKET NUMBER: 2005-1332-AIR-E; IDENTIFIER: RN103102083; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: surface coating and dry abrasive cleaning; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authority to operate a source of air emissions; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(31) COMPANY: Amal Dana dba Rivercrest Service Station; DOCKET NUMBER: 2005-1366-PST-E; IDENTIFIER: RN102370582; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.226(l) and §115.246(1), (6), and (7)(A), and THSC, §382.085(b), by failing to provide copies of all required Stage I and Stage II records pertaining to a UST system for inspection; 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to have a release detection method, by failing to conduct proper release detection, and by failing to test the line leak detectors on an annual basis; 30 TAC §334.48(c), by failing to conduct manual or automatic inventory control procedures for all USTs; 30 TAC §334.8(c)(5)(C), by failing to permanently tag or label each UST fill tube with the number used to identify the tank; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §334.10(b), by failing to maintain the UST records as required; PENALTY: $6,381; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: City of Round Rock; DOCKET NUMBER: 2005-1655-EAQ-E; IDENTIFIER: RN104608591; LOCATION: Round Rock, Williamson County, Texas; TYPE OF FACILITY: public works project on the recharge zone of the Edwards Aquifer; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to receive commission approval of a recharge exception request application prior to commencing construction; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(33) COMPANY: Shannon Medical Center; DOCKET NUMBER: 2005-1939-PST-E; IDENTIFIER: RN100688829; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the cathodic protection system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (B)(ii), by failing to timely renew a previously issued UST delivery certificate and by failing to make available to a common carrier a valid, current delivery certificate; and 30 TAC §§30.301(b), 334.55(a)(3), and 334.401(a), and the Code, §37.003, by failing to ensure that an individual supervising the installation, repair, or removal of a UST holds an on-site supervisor license; PENALTY: $6,992; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(34) COMPANY: Sid Richardson Pipeline, Limited; DOCKET NUMBER: 2005-1304-AIR-E; IDENTIFIER: RN100239698; LOCATION: Coyanosa, Pecos County, Texas; TYPE OF FACILITY: gas plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 2351A, and THSC, §382.085(b), by failing to maintain the sulfur recovery unit efficiency limit of 92.5%; PENALTY: $4,978; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(35) COMPANY: South Rusk County Water Supply Corporation; DOCKET NUMBER: 2005-2071-PWS-E; IDENTIFIER: RN101393544; LOCATION: Laneville, Rusk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for total trihalomethanes (TTHM); PENALTY: $313; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(36) COMPANY: Sparenberg Gin, Inc.; DOCKET NUMBER: 2005-1616-MLM-E; IDENTIFIER: RN104751458; LOCATION: Lamesa, Dawson County, Texas; TYPE OF FACILITY: unauthorized industrial solid waste disposal; RULE VIOLATED: 30 TAC §111.201 and §335.2(a) and THSC, §382.085(b), by allegedly having conducted unauthorized disposal of cotton burr waste; PENALTY: $1,600 ; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(37) COMPANY: Wallace Allen Raynor dba Sun Acres Mobile Home Park; DOCKET NUMBER: 2005-1530-PWS-E; IDENTIFIER: RN101204097; LOCATION: Kilgore, Gregg County, Texas; TYPE OF FACILITY: ground water treatment plant; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by allegedly exceeding the MCL for TTHM; PENALTY: $318; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(38) COMPANY: Hanif Wafia dba Super Stop Texaco; DOCKET NUMBER: 2005-1573-PST-E; IDENTIFIER: RN10466138; LOCATION: Emory, Rains County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4) and the Code, §26.3475(d), by failing

to inspect the cathodic protection system and by failing to have the corrosion protection equipment tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §334.45(c)(3)(A), by failing to properly install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system; PENALTY: $6,800; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(39) COMPANY: City of Taft; DOCKET NUMBER: 2005-1831-MWD-E; IDENTIFIER: RN103124079; LOCATION: Taft, San Patricio County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number WQ0010705001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia nitrogen and CBOD and by failing to submit the annual sludge report; PENALTY: $4,416; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(40) COMPANY: Gulamali Bharwani dba Texfra; DOCKET NUMBER: 2005-1716-PST-E; IDENTIFIER: RN103794194; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $1,280; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200600494
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: January 31, 2006

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## Department of State Health Services

### Notice of Agreed Order with Don H. Handley, D.C., dba Handley Chiropractic Center, P.C.

Notice is hereby given that the Department of State Health Services (department) issued an Agreed Order to the following registrant:

Don H. Handley, D.C., dba Handley Chiropractic Center, P.C. (registration #R04079-000) of San Antonio. A total penalty of $2,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600545
Cathy Campbell
General Counsel
Department of State Health Services
Filed: February 1, 2006

♦ ♦ ♦

### Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: James B. St. Louis, D.D.S., Fort Worth, R11183; Desoto Family Medicine, De Soto, R14113; Thomas Ball, D.D.S., San Juan, R14150; Clifford Charles Seidel, M.D., P.A., Dallas, R17774; Harrill Calhoun Chiropractic Center PC, Austin, R17905; Cameron Hospital Inc., Cameron, R18248; The Chiropractic Health Center, Flower Mound, R19711; Lone Star Chiropractic, Lubbock, R20471; Keller Family Chiropractic Associates, P.C., Keller, R24052; Corinthian Schools, Inc., Houston, R25596; Laboratory, Consultants, and Marine Surveyors, Houston, R26870; Dynamic Xray, Inc., Garland, R27012; Bank of America, Houston, R27554; Philip A. Hicks, D.D.S., RPH, P.A., Houston, R27659; Bread of Life Inc., Houston, R27698; David M. Greenfield, D.D.S., P.A., Houston, R28546; Austin Orthopaedics Spine & Sports Medicine Associates, Austin, R28644; High Tech Institute Inc., Irving, R28646; Mark D. Barnett, D.D.S., P.A., Carrollton, R28647; Parsi Investments Inc., Dallas, Z01587.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600523
Cathy Campbell
General Counsel
Department of State Health Services
Filed: February 1, 2006

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### Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following licensees: Texas NDT Company, Pasadena, L05089; and Healthmont of Texas I LLC, San Benito, L04567.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600522
Cathy Campbell
General Counsel
Department of State Health Services
Filed: February 1, 2006

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### Notice of Public Hearing on Redesign of Statewide Mental Health Crisis System

The Department of State Health Services (department) will hold a public hearing to take public comments on the Texas Mental Health Crisis Services System for the purposes of identifying, establishing, and maintaining quality crisis services statewide.

The hearing will be from 3:30 p.m. to 8:30 p.m., February 15, 2006, at 909 West 45th Street, Building 2, Public Hearing Auditorium, Room 164, Austin, Texas.

Further information may be obtained from Gloria Ratley of the department's Mental Health and Substance Abuse Services, gloria.ratley@dshs.state.tx.us, telephone (512) 206-5816. Persons requiring ADA assistance, may contact Gloria Ratley (512) 206-5816 or T.D.D. (512) 206-5330 at least four business days prior to the meeting.

TRD-200600544
Cathy Campbell
General Counsel
Department of State Health Services
Filed: February 1, 2006

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## Texas Department of Housing and Community Affairs

### Hurricane Rita - Texas Bootstrap Loan Program Notice of Funding Availability

This is an update to the Notice of Funding Availability (NOFA) posted in the *Texas Register* on December 30, 2005 (30 TexReg 9054-9056). The Texas Department of Housing and Community Affairs (TDHCA/the Department), through its Office of Colonia Initiatives (OCI), is pleased to announce that it will make available approximately One Million Eight Hundred Thousand Dollars ($1,800,000) utilizing the State of Texas Housing Trust Fund to organizations assisting individuals or families that were victims of Hurricane Rita to purchase or refinance real property on which to build new residential housing or improve existing residential housing through self-help construction for very low and extremely low income individuals and families (Owner-Builders), including persons with special needs. We believe it is important to spread these funds in a fair manner that ensures they are deployed quickly and administered easily. We need to ensure these dedicated funds are distributed to all affected areas, but will target a higher proportion to those areas most directly and extensively impacted by Hurricane Rita.

Organizations working in the following counties that have been determined to be in a Federal Disaster Area due to Hurricane Rita are eligible to apply. This NOFA has been amended to add Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties.


Angelina

Brazoria

Chambers

Fort Bend

Galveston

Hardin

Harris

Jasper

Jefferson

Liberty

Montgomery

Nacogdoches

Newton

Orange

Polk

Sabine

San Augustine

San Jacinto

Shelby

Trinity

Tyler

Walker

FAXED APPLICATIONS WILL NOT BE ACCEPTED.

All interested parties are encouraged to participate in this program. Applications will be available on December 30, 2005. Technical Assistance for this application will be provided during December 30, 2005 - August 31, 2006. For additional information, time, or to request an application package, please call Raul Gonzales with the Office of Colonia Initiatives at (800) 462-4251, check TDHCA's web-site at www.tdhca.state.tx.us or e-mail your request to raul.gonzales@td-hca.state.tx.us. Please direct your applications to:

Texas Department of Housing and Community Affairs

ATTN: Office of Colonia Initiatives

Post Office Box 13941

Austin, Texas 78711-3941

Or by courier to:

221 East 11th Street

Austin, Texas 78701-2410

TRD-200600458
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: January 27, 2006

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Request for Proposal Auditing Services, RFP No. 06-01

Notice is hereby given of a Request for Proposal (RFP) by the Texas Department of Housing and Community Affairs (TDHCA/Department) for audit services from qualified firms of certified public accountants to perform annual external audit functions for the Department.

TDHCA is seeking a commitment in connection with annual audit services from an independent auditor with work experience and familiarity in taxable and tax exempt housing bonds and federal grants. The Department is the state's lead agency responsible for affordable housing, community development and community assistance programs, and regulation of the state's manufactured housing industry. TDHCA annually administers funds in excess of $500 million, the overwhelming majority of which is derived from mortgage revenue bond financing and refinancing, federal grants and federal tax credits.

Proposals in response to this RFP must be submitted by March 31, 2006, 5:00 p.m., Austin Texas time.

The RFP will be available in the Texas Marketplace which can be accessed at www.marketplace.state.tx.us. Any questions regarding this RFP should be directed to Julie Dumbeck by e-mail at julie.dumbeck@tdhca.state.tx.us or by phone at (512) 475-3991.

TRD-200600543
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 1, 2006

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## Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by VALLEY BAPTIST HEALTH PLAN, INC., under the assumed name VALLEY BAPTIST HEALTH PLANS, a domestic health maintenance organization. The home office is in Harlingen, Texas.

Application to change the name of TEXAS BURIAL LIFE INSURANCE COMPANY to FIRST AMERICAN LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Application for admission to the state of Texas by MIDWEST INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Springfield, Illinois.

Application to change the name of NATIONAL GRANGE MUTUAL INSURANCE COMPANY to NGM INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Jacksonville, Florida.

Application for incorporation to the State of Texas by SIERRA TITLE INSURANCE GUARANTY COMPANY, a domestic title company. The home office is in McAllen, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200600546
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 1, 2006

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Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Federated Mutual Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Federated Mutual Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200600489
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: January 30, 2006

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## Texas Lottery Commission

Instant Game Number 619 "Lucky Times 7"

1.0 Name and Style of Game.

A. The name of Instant Game No. 619 is "LUCKY TIMES 7". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 619 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 619.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 1X, 2X, 3X, 4X, 5X, 6X, 7X, $1.00, $2.00, $3.00, $5.00, $7.00, $10.00, $15.00, $20.00, $30.00, $35.00, $40.00, $50.00, $60.00, $70.00, $100, $250, $280, $500, $1,500, and $25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 619 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| 1 | ONE |
| 2 | TWO |
| 3 | THR |
| 4 | FOR |
| 5 | FIV |
| 6 | SIX |
| 7 | SVN |
| 8 | EGT |
| 9 | NIN |
| 10 | TEN |
| 11 | ELV |
| 12 | TLV |
| 13 | TRN |
| 14 | FTN |
| 15 | FFN |
| 16 | SXN |
| 17 | SVT |
| 18 | ETN |
| 19 | NTN |
| 20 | TWY |
| 21 | TWON |
| 22 | TWTO |
| 23 | TWTH |
| 24 | TWFR |
| 25 | TWFV |
| 26 | TWSX |
| 27 | TWSV |
| 28 | TWET |
| 29 | TWNI |
| 30 | TRTY |
| 31 | TRON |
| 32 | TRTO |
| 33 | TRTH |
| 34 | TRFR |
| 35 | TRFV |
| 36 | TRSX |
| 37 | TRSV |
| 38 | TRET |
| 39 | TRNI |
| 40 | FRTY |
| 1X | 1 TIME |
| 2X | 2 TIMES |
| 3X | 3 TIMES |
| 4X | 4 TIMES |
| 5X | 5 TIMES |
| 6X | 6 TIMES |

| 7X | 7 TIMES |
|---|---|
| $1.00 | ONE$ |
| $2.00 | TWO$ |
| $3.00 | THREE$ |
| $5.00 | FIVE$ |
| $7.00 | SEVEN$ |
| $10.00 | TEN$ |
| $15.00 | FIFTN |
| $20.00 | TWENTY |
| $30.00 | THIRTY |
| $35.00 | TRY FIV |
| $40.00 | FORTY |
| $50.00 | FIFTY |
| $60.00 | SIXTY |
| $70.00 | SEVENTY |
| $100 | ONE HUND |
| $250 | TWO FTY |
| $280 | TWO ETY |
| $500 | FIV HUND |
| $1,500 | 15 HUND |
| $25,000 | 25 THOU |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 619 - 1.2E

| CODE | PRIZE |
|---|---|
| TWO | $2.00 |
| THR | $3.00 |
| FIV | $5.00 |
| SVN | $7.00 |
| TEN | $10.00 |
| FTN | $15.00 |
| TWN | $20.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $7.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $35.00, $50.00, $70.00, $100, or $280.

I. High-Tier Prize- A prize of $1,500 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (619), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 619-0000001-001.

L. Pack - A pack of "LUCKY TIMES 7" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be two (2) fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125. Please note the books will be in a A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY TIMES 7" Instant Game No. 619 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY TIMES 7" Instant Game is determined once the latex on the ticket is scratched off to expose 37 (thirty-seven) Play Symbols. If the player finds the YOUR LUCKY NUMBER play symbol in any game 1 (one) thru 7 (seven), the player wins the prize shown for that game. The player then scratches the BONUS BOX for a chance to win up to 7 (seven) times the amount won on the ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 37 (thirty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 37 (thirty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 37 (thirty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 37 (thirty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. A ticket may win up to 7 (seven) times.

C. No duplicate non-winning prize symbols on a ticket.

D. No more than one win in each game.

E. No duplicate non-winning GAME 1 (one) through 7 (seven) play symbols on a ticket.

F. The BONUS BOX play symbols (2X through 7X) will appear only on intended winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY TIMES 7" Instant Game prize of $2.00, $3.00, $5.00, $7.00, $10.00, $15.00, $20.00, $35.00, $50.00, $70.00, $100, or $280, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if

valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $35.00, $50.00, $70.00, $100, or $280 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY TIMES 7" Instant Game prize of $1,500 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY TIMES 7" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY TIMES 7" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY TIMES 7" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 619. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 619 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---|---|---|
| $2 | 783,360 | 10.42 |
| $3 | 620,160 | 13.16 |
| $5 | 130,560 | 62.50 |
| $7 | 65,280 | 125.00 |
| $10 | 65,280 | 125.00 |
| $15 | 65,280 | 125.00 |
| $20 | 65,280 | 125.00 |
| $35 | 15,572 | 524.02 |
| $50 | 10,200 | 800.00 |
| $70 | 5,984 | 1,363.64 |
| $100 | 2,312 | 3,529.41 |
| $280 | 476 | 17,142.86 |
| $1,500 | 296 | 27,567.57 |
| $25,000 | 34 | 240,000.00 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 619 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 619, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200600492
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 30, 2006

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Instant Game Number 631 "Instant Keno"

1.0 Name and Style of Game.

A. The name of Instant Game No. 631 is "INSTANT KENO". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 631 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 631.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, and 80.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 631 - 1.2D

| PLAY SYMBOL | CAPTION |
|---|---|
| 01 | 01 |
| 02 | 02 |
| 03 | 03 |
| 04 | 04 |
| 05 | 05 |
| 06 | 06 |
| 07 | 07 |
| 08 | 08 |
| 09 | 09 |
| 10 | 10 |
| 11 | 11 |
| 12 | 12 |
| 13 | 13 |
| 14 | 14 |
| 15 | 15 |
| 16 | 16 |
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| 36 | 36 |
| 37 | 37 |
| 38 | 38 |
| 39 | 39 |
| 40 | 40 |
| 41 | 41 |
| 42 | 42 |
| 43 | 43 |
| 44 | 44 |
| 45 | 45 |
| 46 | 46 |

| | |
|---|---|
| 47 | 47 |
| 48 | 48 |
| 49 | 49 |
| 50 | 50 |
| 51 | 51 |
| 52 | 52 |
| 53 | 53 |
| 54 | 54 |
| 55 | 55 |
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| 70 | 70 |
| 71 | 71 |
| 72 | 72 |
| 73 | 73 |
| 74 | 74 |
| 75 | 75 |
| 76 | 76 |
| 77 | 77 |
| 78 | 78 |
| 79 | 79 |
| 80 | 80 |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 631 - 1.2E

| CODE | PRIZE |
|---|---|
| TWO | $2.00 |
| FIV | $5.00 |
| TEN | $10.00 |
| FTN | $15.00 |
| TWN | $20.00 |

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00 or $100.

I. High-Tier Prize- A prize of $1,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (631), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 631-0000001-001.

L. Pack - A pack of "INSTANT KENO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "INSTANT KENO" Instant Game No. 631 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "INSTANT KENO" Instant Game is determined once the latex on the ticket is scratched off to expose 42 (forty-two) Play Symbols. Scratch to reveal numbers on the KENO BOARD. Then scratch only the numbers in Games 1 to 6 that match the numbers revealed on the KENO BOARD. The player wins prize in the corresponding legend for numbers matched in each game. Only one prize paid per winning game. Players can win up to six (6) times on a ticket. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 42 (forty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 42 (forty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 42 (forty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 42 (forty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket will win as indicated by the prize structure.

B. A ticket can win up to six (6) times and only once per Game.

C. Adjacent tickets in a pack will not have identical patterns.

D. The Keno Board will contain sixteen (16) numbers.

E. The numbers will never appear in numerical order (ascending or descending) when reading by row or column.

F. On all tickets, the six (6) Games will contain the following:

(a) Game 1- will contain 1 number

(b) Game 2- will contain 2 numbers

(c) Game 3- will contain 3 numbers

(d) Game 4- will contain 4 numbers

(e) Game 5- will contain 6 numbers

(f) Game 6- will contain 10 numbers

G. The numbers are to be listed in numerical order from left to right and top to bottom in each Game. There is no sequential relationship between Games.

H. The numbers in each Game (1 through 6) will range from 01 to 80. A number will never appear more than once within or across Games 1 to 6.

I. The Prize Legends for each Game as they appear on the front of the ticket are as follows:

Figure 3: GAME NO. 631 - 2.2I

| Game | Match | Prize |
|---|---|---|
| Game 1 | 1 of 1 | $5 |
| Game 2 | 2 of 2 | $10 |
| | 1 of 2 | $2 |
| Game 3 | 3 of 3 | $20 |
| | 2 of 3 | $2 |
| Game 4 | 4 of 4 | $50 |
| | 3 of 4 | $5 |
| | 2 of 4 | $2 |
| Game 5 | 6 of 6 | $100 |
| | 5 of 6 | $50 |
| | 4 of 6 | $5 |
| | 3 of 6 | $2 |
| Game 6 | 10 of 10 | $25,000 |
| | 9 of 10 | $1,000 |
| | 8 of 10 | $100 |
| | 7 o f 10 | $20 |
| | 6 of 10 | $10 |
| | 5 of 10 | $2 |
| | 0 of 10 | $5 |

J. Games 5 and 6 will always have a minimum of two (2) numbers opened.

2.3 Procedure for Claiming Prizes.

A. To claim an "INSTANT KENO" Instant Game prize of $2.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00 or $100

ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim an "INSTANT KENO" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "INSTANT KENO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "INSTANT KENO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "INSTANT KENO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,920,000 tickets in the Instant Game No. 631. The approximate number and value of prizes in the game are as follows:

Figure 4: GAME NO. 631 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|---|---|---|
| $2 | 1,077,120 | 7.35 |
| $5 | 411,840 | 19.23 |
| $10 | 190,080 | 41.67 |
| $15 | 31,680 | 250.00 |
| $20 | 63,360 | 125.00 |
| $30 | 29,040 | 272.73 |
| $50 | 16,500 | 480.00 |
| $100 | 5,280 | 1,500.00 |
| $1,000 | 40 | 198,000.00 |
| $25,000 | 7 | 1,131,428.57 |

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.34. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 631 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 631, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200600493
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: January 31, 2006

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## Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 25, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable for a State-Issued Certificate of Franchise Authority, Project Number 32325 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service includes area within the boundaries of the City of Temple, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32325.

TRD-200600453
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2006

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 26, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for a State-Issued Certificate of Franchise Authority, Project Number 32331 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes all or portions of the following municipalities as described: City of Hurst, City of Richland Hills, City of University Park, and the Town of Westlake.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32331.

TRD-200600498
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received applications on January 27, 2006, for state-issued certificates of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the applications follows.

Project Title and Number: Application of Northland Cable Ventures LLC for a State-Issued Certificate of Franchise Authority, Project Number 32338 and Project Number 32339 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area is within the municipal boundaries of the State of Texas cities and/or towns of: Hillsboro, Lamesa, and Tyler. Also, the unincorporated area of Smith County, Texas known as the Lake Tyler area, and within the boundaries of the City of Llano, Texas and surrounding areas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Numbers 32338/32339.

TRD-200600502
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received applications on January 27, 2006, for state- issued certificates of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Northland Cable Ventures LLC for a State-Issued Certificate of Franchise Authority, Project Number 32338 and Project Number 32339 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area is within the municipal boundaries of the State of Texas cities and/or towns of: Hillsboro, Lamesa and Tyler. Also, the unincorporated area of Smith County, Texas known as the Lake Tyler area, and within the boundaries of the City of Llano, Texas and surrounding areas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Numbers 32338/32339.

TRD-200600503
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Announcement of Application to Amend a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on January 26, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Texas and Kansas City Cable Partners, L.P. d/b/a Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 32330 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32330.

TRD-200600497
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Corrected Second Notice of Petition for Approval of Fuel-Related Provisions of Rate Agreement

Notice is given to the public of petition for approval of fuel-related provisions of rate agreement filed with the Public Utility Commission of Texas on January 17, 2006.

Docket Style and Number: Petition of El Paso Electric Company and the City of El Paso for Approval of Fuel-Related Provisions of Rate Agreement. Docket Number 32289.

The Application: El Paso Electric Company (EPE) and the City of El Paso (City) filed a petition with the Public Utility Commission of Texas (commission) for approval of fuel-related provisions of the Rate Agreement entered into by the City and EPE. Alternatively, EPE and the City request a good cause exception to P.U.C. Substantive Rule 25.236 to implement the fuel-related provisions of the Rate Agreement. The Proposed Rate Agreement, in effect on July 1, 2005, extends the existing base rate freeze within the City of El Paso and the treatment of certain fuel-related costs and expenses previously established in the Agreed Order and Stipulation (Stipulation) in Docket Number 12700,

*Application of El Paso Electric Co. for Authority to Change Rates and for Approval of Reacquisition of Palo Verde Leased Assets* (Aug. 30, 1995). The Stipulation adopted in Docket Number 12700 required EPE to reconcile its fuel and purchased power costs according to Commission Substantive Rules in effect on July 1, 1995, required that EPE share wheeling revenues and margins on off-system sales with its Texas customers, and continued performance standards for the Palo Verde Nuclear Generating Station.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32289.

TRD-200600519
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 27, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Glacial Energy of Texas, Inc. for Retail Electric Provider (REP) Certification, Docket Number 32342 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 17, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32342.

TRD-200600504
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Notice of Application for Amendment to Certificate of Operating Authority

On January 27, 2006, AT&T filed an application with the Public Utility Commission of Texas (commission) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50005. Applicant intends to reflect a change in service area to include the Bulverde exchange served by Guadalupe Valley Telephone Cooperative, Inc.

The Application: Application of AT&T for an Amendment to its Certificate of Operating Authority, Docket Number 32345.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 15, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32345.

TRD-200600505
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 27, 2006, Granite Telecommunications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60559. Applicant intends to reflect a change in service area to include the current operating service territory of CenturyTel of Port Aransas, CenturyTel of San Marcos, Inc. and CenturyTel of Lake Dallas, Inc., and United Telephone Company of Texas, Inc. and Central Telephone Company of Texas d/b/a Sprint.

The Application: Application of Granite Telecommunications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32341.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 15, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32341.

TRD-200600506
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Webb County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on January 24, 2006, for a certificate of convenience and necessity for a proposed transmission line in Webb County, Texas.

Docket Style and Number: Application of AEP Texas Central Company (TCC) for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Webb County, Texas. Docket Number 32172.

The Application: The new 138 kV transmission line will originate at the existing TCC Wormser Switch Station, and the transmission line ending point is at the new Sierra Vista Substation located within Webb County. The miles of right-of-way for this project will be approxi-

mately 3 miles. The estimated cost for the project is $3,241,000, with an estimated completion date of October 1, 2006.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is March 10, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735- 2989. All comments should reference Docket Number 32172.

TRD-200600454
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 27, 2006

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## Notice of Application to Amend Certificated Service Area Boundaries in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on January 27, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (International Logistic Business Park). Docket Number 32340.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from G & R Industrial Facilities, L.L.C. requesting BPUB to provide electric utility service to a 110.291-acre business park. The estimated cost to BPUB to provide service to this proposed area is $137,840.00. The area is presently undeveloped. If the application is granted, the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than February 17, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32340.

TRD-200600500
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Notice of Application to Amend Certificated Service Area Boundaries in Maverick County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on January 26, 2006, for an amendment to certificated service area boundaries within Maverick County, Texas.

Docket Style and Number: Joint Application of Rio Grande Electric Cooperative, Inc. (RGEC) and AEP Texas Central Company (TCC) for a Certificate of Convenience and Necessity for Service Area Boundaries within Maverick County. Docket Number 32335.

The Application: Lewis Farms Estates Unit #3 lies partially within RGEC's service area and the remainder is in TCC's service area. The proposed boundary change will transfer a portion of service area from TCC to RGEC in order that only one company will have electric distribution facilities in its certificated portion of the Lewis Farm Estates Unit #3 Subdivision. None of the affected lots have been sold to individual consumers.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than February 17, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32335.

TRD-200600499
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Public Notice of Request for Comment Regarding Rulemaking Proceeding to Amend P.U.C. Substantive Rule §26.420(f)

The staff of the Public Utility Commission of Texas (commission) request comment regarding a strawman rule which revises the existing assessment rule to reflect the current assessment methodology adopted by the commission in Docket Number 21208 (see Docket No. 21208, Order Regarding TUSF Assessment of Intrastate Telecommunications Services Receipts, July 29, 2004). Project Number 28708, *Proceeding to Amend P.U.C. SUBST. R. 26.420(f)- Assessments for the Texas Universal Service Fund (TUSF)*, has been established for this proceeding.

On Friday, February 10, 2006, the commission staff shall make available on its website (http://www.puc.state.tx.us/rules/rulemake/28708/28708.cfm) and in Central Records under Project Number 28708 a copy of the strawman rule. The commission requests interested persons file written comments on this strawman rule.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 by Wednesday, March 1, 2006. All responses should reference Project Number 28708. The commission requests that comments be limited to 10 pages (not including attachments).

Questions concerning the comments or this notice should be referred to Rosemary McMahill, Commission Industry Oversight Division, (512)936-7244. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200600513
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Public Notice of Workshop and Request for Comments on Establishment of Telecom Quality of Service Standards Applicable to Certificate Holders Who Use Alternate Technologies to Meet POLR Obligations

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the establishment of telecom quality of service standards applicable to certificate holders who use alternate technologies to meet provider of last resort (POLR) obligations, on Tuesday, March 21, 2006, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31958, *Rulemaking Project for Establishing Telecom Service Quality Standards for Alternate Technologies Used by a POLR*, has been established for this proceeding. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. Should the commission amend P.U.C. Substantive Rule §26.54 or adopt a new rule to establish quality of service standards applicable to a certificate holder who employs technologies other than traditional wireline or landline technologies to meet its provider of last resort (POLR) obligations?

2. Should the commission define which alternate technologies (currently in use) may be used to meet POLR obligations for the purpose of establishing quality of service standards? If yes, which technologies (currently in use) should be considered in establishing quality of service standards comparable to those established for traditional wireline or landline technologies?

3. Should the commission adopt uniform quality of service standards for all alternate technologies or should there be varying standards for different technologies? Please give a detailed explanation.

4. Should all of the service objectives and performance benchmarks established in P.U.C. Substantive Rule §26.54 be applied in establishing comparable quality of service standards for alternate technologies? If not, which objectives and/or benchmarks should not apply or should apply with modifications?

5. Should the quality of service standards established for alternate technologies include reporting requirements?

6. Should the commission further clarify that the current 911 and E911 standards established in P.U.C. Substantive Rules §§26.272(e)(1)(B), 26.433, and 26.435 apply to all certified telecommunications utilities (CTUs) regardless of the technology used in providing telecommunications service? Should the commission establish standards for 911 and E911 services specifically for alternate technologies?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 31958.

Ten days prior to the workshop, the commission shall make available in Central Records under Project Number 31958, an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to James Kelsaw, Senior Network Analyst, Infrastructure Reliability Division, (512) 936-7338. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200600515
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Public Notice of Workshop on Classification System for Administrative Penalties and Request for Comments

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding a classification system for administrative penalties, on Thursday, March 2, 2006, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31937, *Rulemaking to Establish a Classification System for the Assessment of Administrative Penalties*, has been established for this proceeding. By developing a classification system, the commission will be fulfilling the legislative requirement set forth in Public Utility Regulatory Act Section 15.023(c), requiring the commission to develop a classification system by rule. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. How many separate classes of violations should be established (note: at least one class must be reserved for the most serious violations warranting over $5,000 per violation)?

2. Please provide comments regarding whether the following criteria are appropriate for establishing a classification system:

a. Whether the violation involves communications or electric;

b. Whether the violation concerns wholesale or retail matters;

c. Whether the violation concerns high or low cost services;

d. Impact on public health & safety;

e. Impact on public welfare;

f. Impact on the reliability;

g. Whether the violation involves market power abuse or anticompetitive behavior;

h. Whether the violation concerns market rules and ERCOT Protocols;

i. Impact on businesses;

j. Impact on residential customers; and/or

k. Whether violation is technical or substantive.

3. Please list and explain any additional criteria you believe should be considered in determining the class of a particular violation.

4. How do you think the commission should use these criteria to divide violations into classes?

5. The law requires that the range of administrative penalties that may be assessed within each class of violation be based on six factors including: (1) the seriousness of the violation; (2) the economic harm to property or the environment caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require. How do you think the commission should use these six factors to assess a penalty amount in a particular case for a specific violation?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within SEVENTEEN days of the date of publication of this notice. All responses should reference Project Number 31937. The commission requests comments be limited to TWENTY-FIVE pages. This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Five days prior to the workshop the commission shall make available in Central Records under Project Number 31937 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Jeffrey Pender, Attorney, Legal Division, (512) 936-7285. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200600508
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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### Request for Comments on Strawman Rules in Rulemaking to Modify Payphone Rules and to Address Access Line Charges to Comply with PURA §55.1735

The commission requests that interested persons file comments on the following strawman rules. The strawman includes the following proposed changes to the existing rules: (1) addition of a sentence to §26.346(a) to comply with PURA §55.1735, regarding charges for pay phone access lines; (2) replacement of "pay telephone services" with the abbreviation "PTS" in §26.346(b)(1); (3) replacement of the rate table in §26.346(b)(1)(F) with a single blended per minute rate calculated by averaging all of the mileage banded rates; (4) addition of paragraph (3) to §26.346(b) to make the rule consistent with PURA §§58.051, 58.151 and 58.152, regarding electing companies; and (5) changes to §26.345(a)(3) regarding notice requirements for payphone placards. The strawman is available at http://www.puc.state.tx.us/rules/rulemake/31957/31957.cfm or on the commission's interchange filing system under Project Number 31957.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days of the date of publication of this notice. All responses should reference Project Number 31957.

Questions concerning this rulemaking should be referred to Stephen Mendoza, Infrastructure Reliability Division, (512) 936-7394, or Andrew Kang, Attorney, Legal Division, (512) 936- 7293. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200600509
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2006

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## Texas A&M University, Board of Regents

### Public Notice Issued January 27, 2006 (Announcement of Finalist for the Position of President of West Texas A&M University)

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the position of President of West Texas A&M University. Upon the expiration of twenty-one (21) days, final action is to be taken by the Board of Regents of The Texas A&M University System:

J. Patrick O'Brien

TRD-200600459
Vickie Burt Spillers
Executive Secretary to Board of Regents
Texas A&M University, Board of Regents
Filed: January 27, 2006

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## Texas Department of Transportation

### Finance Division - Request for Competing Proposals

Pursuant to Transportation Code, §222.104, and Title 43, Texas Administrative Code, Chapter 5, Subchapter E, the Texas Department of Transportation (department) announces the issuance of its Request for Competing Proposals to Design, Develop, Finance, Construct, and Potentially Operate and Maintain the Loop 20 and International Boulevard Interchange in Laredo, Texas Under a Pass-Through Toll Agreement (RFCP).

The department has received a proposal from a private entity under Title 43, Texas Administrative Code, Chapter 5, Subchapter E. The department intends to evaluate that proposal, and it may negotiate a pass-through toll agreement with the proposer based on the proposal. The department will accept for simultaneous consideration any competing proposals it receives that are submitted in accordance with Title 43, Texas Administrative Code, Chapter 5, Subchapter E, and the RFCP by the due date. The due date for competing proposals is 3:00 p.m. Central Standard Time, Tuesday, March 28, 2006. Competing Proposals should be addressed to Mr. James Bass, Chief Financial Officer, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701.

The project as proposed calls for the construction of a nontolled interchange on existing Loop 20 and the northern extension of International Boulevard in Laredo, Webb County, Texas. The proposed interchange would cross over the Loop 20 mainlanes and intersect the existing frontage roads.

The general criteria that will be used to evaluate all proposals and the relative weight given to the criteria are as follows: General Experience and Qualifications - 40%; Project Development and Benefits - 60%. Specific evaluation criteria are set forth in the RFCP.

The department will make the RFCP available electronically on the Texas Electronic State Business Daily, **http://esbd.tbpc.state.tx.us/1380/sagency.cfm** and at the following address: Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, on or after Friday, February 10, 2006.

If there are any procedural questions, please contact Mr. Dorn Smith of the department's Finance Division at (512) 463-8721.

TRD-200600548
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 1, 2006

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### Notice of Intent, Bolivar Bridge EIS

Pursuant to 43 TAC §2.43(c)(8)(B), the Texas Department of Transportation (TxDOT), in cooperation with the Federal Highway Administration (FHWA), is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed State Highway (SH) 87 bridge. The bridge will connect Galveston Island and Bolivar Peninsula in Galveston County, Texas. The proposed project area crosses Galveston Bay and the Galveston, Texas City, and

Houston ship channels and includes transportation alternatives within the southern portion of Bolivar Peninsula from the Bolivar ferry landing to SH 124, the northern portion of Galveston Island from Interstate Highway (IH) 45 at SH 275 to Pelican Island.

TxDOT currently operates a free ferry system between Galveston Island and Bolivar Peninsula. Due to increased operations and maintenance costs, TxDOT is proposing to replace the existing ferry system with a permanent bridge. Increasing traffic along SH 87 (Ferry Road) has resulted in lengthy delays for residents and visitors. These delays have resulted in slow emergency vehicle response times and long commute times. Public meetings were held in 2000 on Bolivar Peninsula and Galveston Island to solicit comments regarding the existing ferry system and potential long-term improvements.

In 2001, a feasibility study was completed which evaluated the existing ferry system and identified and compared alternatives for a proposed bridge location. TxDOT is preparing an EIS to further evaluate viable build alternatives and a no-build alternative. The implementation of tolling will be considered as a funding option. The feasibility study determined a need for immediate improvements to the ferry system and a bridge for long-term improvements.

Alternatives to be studied include no-build and various route location alternatives within the study area. The EIS will include a recommended proposed bridge location, number of lanes, roadway configuration, and operational characteristics of the proposed bridge. Impacts caused by the construction and operation of the proposed improvements would vary according to the alternative alignment utilized. Generally, impacts would include the following: impacts to residences and businesses, including potential relocation; transportation impacts (construction detours, construction traffic, and mobility improvement); air and noise impacts from construction equipment and operation of the roadway; social and economic impacts; impacts to historic cultural resources; water quality impacts from construction and roadway runoff; and impacts to waters of the U.S. including wetlands from right-of-way encroachment.

Correspondence describing the proposed project and soliciting comments has been sent to appropriate federal, state, regional, and local agencies, and to organizations and persons who have previously expressed an interest or are known to have an interest in this project.

TxDOT will conduct two public meetings in February 2006. The first public meeting will be held from 6:00 p.m. to 8:00 p.m. on Tuesday, February 21, 2006 at Crenshaw Elementary/Middle School, 416 State Highway 87, Bolivar, Texas 77650. The second public meeting will be held from 6:00 p.m. to 8:00 p.m. on Wednesday, February 22, 2006 at the Galveston Island Convention Center, 5600 Seawall Boulevard, Galveston, Texas 77551.

Both public meetings will be conducted in an open house format with no formal presentation. At least 30 days and 10 days prior to the public meetings, notices will be published in newspapers generally circulated in the project area. These will be the first in a series of meetings to solicit public comments on the proposed action. Persons interested in attending these meetings who have special communication or accommodation needs are encouraged to contact the local TxDOT Public Information Office at (713) 802-5072 at least two days prior to the meetings. TxDOT offices are open Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding national holidays. Because the public meetings will be conducted in English, any requests for language interpreters should also be made at least two days prior to the public scoping meetings. Every reasonable effort will be made to accommodate these needs.

Public involvement will occur throughout the planning process. Public notice will be given stating the time and place of future public meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to a public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to TxDOT at the address provided. Additional project information may be obtained by visiting the project website at **www.bolivarbridge.com.**

**Agency Contact:** Comments or questions concerning this proposed action and the EIS should be sent to Dianna F. Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 125 E. 11th Street, Austin, Texas 78701, telephone (512) 416-2734.

TRD-200600549
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 1, 2006

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## Texas Water Development Board

### Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board (Board) provides notice of the following applications received by the Board:

Village of Surfside Beach, Texas, 1304 Monument Drive, Surfside Beach, Texas 77541, received April 29, 2005, application for financial assistance in the amount of $1,655,000 from the Drinking Water State Revolving Fund.

City of Houston, 901 Bagby, Houston, Texas 77002, received December 1, 2005, application for financial assistance in the amount of $56,490,000 from the Clean Water State Revolving Fund.

Greater Texoma Utility Authority, on behalf of City of Pottsboro, 5100 Airport Drive, Denison, Texas 75020, received December 1, 2005, application for financial assistance in the amount of $3,210,000 from the Clean Water State Revolving Fund.

City of Jarrell, P. O. Box 828, Jarrell, Texas 76537, received October 14, 2005, application for financial assistance in the amount of $7,895,000 from the Clean Water State Revolving Fund-Disadvantaged Community Program.

Travis County Water Control and Improvement District No. 17, 3812 Eck Lane, Austin, Texas 78734, received January 3, 2006, application for financial assistance in the amount of $5,890,000 from the Texas Water Development Funds.

City of Groesbeck, 402 West Navasota, Groesbeck, Texas 76642, received December 2, 2005, application for financial assistance in the amount of $1,025,000 from the Drinking Water State Revolving Fund-Disadvantaged Community Program.

La Joya Water Supply Corporation, P. O. Box A, La Joya, Texas 78560, received December 30, 2005, application for financial assistance in the amount of $8,915,000 from the Rural Water Assistance Fund.

City of Vidor, 170 North Main Street, Vidor, Texas 77622, received December 14, 2005, application for financial assistance in an amount not to exceed $128,000 from the Research and Planning Fund.

City of Friendswood, 910 South Friendswood Drive, Friendswood Texas 77546-4856, received December 14, 2005, application for financial assistance in an amount not to exceed $350,000 from the Research and Planning Fund.

City of Brownsville, 1150 E. Adams, 3rd Floor, Brownsville, Texas 78521, received December 12, 2005, application for financial assistance in an amount not to exceed $169,166 from the Research and Planning Fund.

City of Stamford, P. O. Drawer 191, Stamford, Texas 79553, received December 15, 2005, application for financial assistance in an amount not to exceed $73,300 from the Research and Planning Fund.

Wharton County, 309 East Milam, Wharton, Texas 77488, received December 15, 2005, application for financial assistance in an amount not to exceed $691,793 from the Research and Planning Fund.

City of Grand Prairie, P. O. Box 534045, Grand Prairie, Texas 75053, received December 15, 2005, application for financial assistance in an amount not to exceed $275,000 from the Research and Planning Fund.

Cameron County Drainage District No. 5, 301 East Pearce, Harlingen, Texas 78550, received December 15, 2005, application for financial assistance in an amount not to exceed $250,000 from the Research and Planning Fund.

Kerr County, 500 Main Street, Kerrville, Texas 78028, received December 9, 2005, application for financial assistance in an amount not to exceed $60,880 from the Research and Planning Fund.

Cities of Aledo, Ft. Worth, Hudson Oaks, Weather, and others, 200 Old Annetta Road, Aledo, Texas 76008, received December 15, 2005, application for financial assistance in an amount not to exceed $67,375 from the Research and Planning Fund.

Lake Livingston Water Supply & Sewer Service Corp., P. O. Box 1149, Livingston, Texas 77351, received December 15, 2005, application for financial assistance in an amount not to exceed $89,950 from the Research and Planning Fund.

Bolivar Peninsula Special Utility District, P. O. Box 1938, Crystal Beach Texas 77650, received December 15, 2005, application for financial assistance in an amount not to exceed $100,000 from the Research and Planning Fund.

Lone Star Groundwater District, 207 W. Phillips St., Suite 300, Conroe, Texas 77305, received December 15, 2005, application for financial assistance in an amount not to exceed $322,832 from the Research and Planning Fund.

City of Browndell, P. O. Box 223723, Dallas, Texas 75222, received December 15, 2005, application for financial assistance in an amount not to exceed $50,000 from the Research and Planning Fund.

Quail Valley Underground District, Thunderbird, Meadow Creek, and others, 3134 Cartwright Road, Missouri City, Texas 77459, received December 15, 2005, application for financial assistance in an amount not to exceed $150,000 from the Research and Planning Fund.

Texas Cooperative Extension, 3000 Briarcrest Drive, Suite 101, Bryan, Texas 77082, received January 9, 2006, application for financial assistance in the amount of $250,000 from the Agricultural Water Conservation Loan Program.

Texas Cooperative Extension, 3000 Briarcrest Drive, Suite 101, Bryan, Texas 77082, received January 9, 2006, application for financial assistance in the amount of $350,000 from the Agricultural Water Conservation Loan Program.

Texas Agriculture Experiment Station, Jack K. Williams Administration Bldg., Suite 113, College Station, Texas 77843-2142, received January 9, 2006, application for financial assistance in the amount of $350,000 from the Agricultural Water Conservation Loan Program.

LBG Guyton Associates, 1101 S. Capital of Texas Highway, Suite B-220, Austin, Texas 78746, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

Tetra Tech, 4807 Spicewood Springs Road, Austin, Texas 78759, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

Intera Incorporated, 9111 Research Boulevard, Austin, Texas 78758, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

Tetra Tech, 4807 Spicewood Springs Road, Austin, Texas 78759, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

R. W. Harden & Associates, Inc., 3409 Executive Center Dr., Suite 226, Austin, Texas 78731, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

Daniel B. Stephens & Associates, Inc., 6020 Academy NE, Suite 10, Albuquerque, New Mexico 87109, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

United States Geological Survey, 8027 Exchange Drive, Austin, Texas 78754, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

Intera Incorporated, 9111 Research Boulevard, Austin, Texas 78758, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

Daniel B. Stephens & Associates, Inc., 6020 Academy NE, Suite 100, Albuquerque, New Mexico 87109, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

R. W. Harden & Associates, Inc., 3409 Executive Center Dr., Suite 226, Austin, Texas 78731, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

University of Texas - Bureau Economic Geology, Box X, University Station, Austin Texas, 78758, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

LBG Guyton Associates, 1101 S. Capital of Texas Highway, Suite B-220, Austin, Texas, 78746, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

Tetra Tech, 4807 Spicewood Springs Road, Austin, Texas 78759, received December 5, 2005, application for financial assistance from the Research and Planning Fund.

TRD-200600541
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: February 1, 2006

## How to Use the Texas Register

**Information Available**: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite**: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research**: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

## Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite**: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update**: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
***Part I. Texas Department of Human Services***
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).